

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

(In compliance with a resolution of the Senate)

Sundry Documents relating to the Northeastern Boundary of the United States.

JUNE 15, 1836.—Read, and referred to the Committee on Foreign Relations.

JUNE 23, 1836.—Ordered to be printed, and that 3,000 additional copies be sent to the Senate.

To the Senate of the United States:

I communicate to the Senate a report from the Secretary of State, with a copy of the correspondence requested by a resolution of the 21st ultimo, relative to the Northeastern boundary of the United States.

At the last session of Congress, I felt it my duty to decline complying with a request made by the House of Representatives for copies of this correspondence; feeling, as I did, that it would be inexpedient to publish it while the negotiation was pending. But, as the negotiation was undertaken under the special advice of the Senate, I deem it improper to withhold the information which that body has requested; submitting to them to decide whether it will be expedient to publish the correspondence before the negotiation has been closed.

ANDREW JACKSON.

WASHINGTON, June 15, 1836.

DEPARTMENT OF STATE,

Washington, June 13, 1836.

The Secretary of State, to whom has been referred the resolution of the Senate of the 21st ultimo, requesting the President to communicate to that body, "so far as in his judgment the public interest may permit, and confidentially or otherwise, information of the present state of the negotiation between the United States and Great Britain respecting the Northeastern boundary of the United States; including all correspondence between the two Governments, not heretofore communicated to the Senate, and those preliminary conditions, without which Great Britain

declines to renew the negotiation, as stated in the President's message at the opening of the present session, and which conditions he deems to be incompatible with a satisfactory and rightful adjustment of the controversy," has the honor to submit to the President the accompanying copy of a correspondence between the Secretary of State and the diplomatic representative of his Britannic Majesty at Washington, containing the information called for by the resolution of the Senate.

JOHN FORSYTH.

To the PRESIDENT of the United States.

List of accompanying papers.

	Dates.
Mr. Livingston to Mr. Bankhead, - - -	July 21, 1832
Mr. Bankhead to Mr. Livingston, - - -	July 21, 1832
Sir Charles R. Vaughan to Mr. Livingston, - - -	April 14, 1833
Mr. Livingston to Sir Charles R. Vaughan, - - -	April 30, 1833
Sir Charles R. Vaughan to Mr. Livingston, - - -	May 11, 1833
Mr. Livingston to Sir Charles R. Vaughan, - - -	May 28, 1833
Sir Charles R. Vaughan to Mr. McLane, - - -	May 31, 1833
Mr. McLane to Sir Charles R. Vaughan, - - -	June 5, 1833
Sir Charles R. Vaughan to Mr. McLane, - - -	June 6, 1833
Same to same, - - -	Feb'y 10, 1834
Same to same, - - -	do.
Mr. McLane to Sir Charles R. Vaughan, - - -	March 11, 1834
Sir Charles R. Vaughan to Mr. McLane, - - -	March 16, 1834
Mr. McLane to Sir Charles R. Vaughan, - - -	March 21, 1834
Sir Charles R. Vaughan to Mr. McLane, - - -	March 24, 1834
Same to Mr. Forsyth, - - -	Dec'r 8, 1834
Mr. Forsyth to Sir Charles R. Vaughan, - - -	April 28, 1835
Sir Charles R. Vaughan to Mr. Forsyth, - - -	May 4, 1835
Mr. Bankhead to Mr. Forsyth, - - -	Dec'r 28, 1835
Mr. Forsyth to Mr. Bankhead, - - -	Feb'y 29, 1836
Mr. Bankhead to Mr. Forsyth, - - -	March 4, 1836
Mr. Forsyth to Mr. Bankhead, - - -	March 5, 1836

Mr. Livingston to Mr. Bankhead.

DEPARTMENT OF STATE,

Washington, July 21, 1832.

The undersigned, Secretary of State of the United States, will now have the honor to fulfil to Mr. Bankhead, his Britannic Majesty's chargé d'affaires, the promise which he made, that, as soon as the action of the Senate should be known, on the reference made to that body of the decision of the King of the Netherlands, the undersigned would answer Mr. Bankhead's note of the 20th of December last.

His Britannic Majesty's Government is too well acquainted with the division of powers in that of the United States, to make it necessary to enter into any explanation of the reasons which rendered it obligatory on the President to submit the whole subject to the Senate for its advice. The result of that application is a determination on the part of the Senate not to consider the decision of the King of the Netherlands as obligatory, and a refusal to advise and consent to its execution; but they have passed a resolution advising the President to open a new negotiation with his Britannic Majesty's Government, for the ascertainment of the boundary between the possessions of the United States and those of Great Britain, on the Northeastern frontier of the United States, according to the treaty of peace of 1783. This resolution was adopted on the conviction felt by the Senate, that the sovereign arbiter had not decided the question submitted to him, or had decided it in a manner unauthorized by the submission.

It is not the intention of the undersigned to enter into an investigation of the argument which has led to this conclusion. The decision of the Senate precludes it, and the object of this communication renders it unnecessary; but it may be proper to add, that no question could have arisen as to the validity of the decision, had the sovereign arbiter determined on, and designated, any boundary, as that which was intended by the treaty of 1783. He has not done so. Not being able, consistently with the evidence before him, to declare that the line he has thought the most proper to be established was the boundary intended by the treaty of 1783, he seems to have abandoned the character of arbiter, and assumed that of a mediator, advising both parties that a boundary which he described should be accepted as one most convenient to them. But this line trenches, as is asserted by one of the States of the Union, upon its territory, and that State controverts the constitutional power of the United States to circumscribe its limits without its assent. If the decision had indicated this line as the boundary designated by the treaty of 1783, this objection could not have been urged; because then no part of the territory to the north or the east of it, could be within the State of Maine, and however the United States, or any individual State, might think itself aggrieved by the decision, as it would, in that case, have been made in conformity to the submission, it would have been carried into immediate effect. The case is now entirely different, and the necessity for further negotiation must be apparent, to adjust a difference which the sovereign arbiter has, in the opinion of a co-ordinate branch of our Executive powers, failed to decide. That negotiation will be open-

ed and carried on by the President with the sincerest disposition to bring to an amicable, speedy, and satisfactory conclusion, a question which might otherwise interrupt the harmony which so happily subsists between the two countries, and which he most earnestly wishes to preserve.

The undersigned is instructed to say that, even if the negotiators of the two parties are unable to agree on the true line designated by the treaty of 1783, means will probably be found of avoiding the constitutional difficulties that have hitherto attended the establishment of a boundary more convenient to both parties than that designated by the treaty, or that recommended by his Majesty the King of the Netherlands, an arrangement being now in progress, with every probability of a speedy conclusion, between the United States and the State of Maine, by which the Government of the United States will be clothed with more ample powers than it has heretofore possessed, to effect that end.

Should a negotiation be opened on this principal point, it will naturally embrace, as connected with it, the right of navigation of the river St. John, an object of scarcely less importance to the convenience and future harmony of the two nations, than the designation of the boundary; it being the wish of the President, and as he has the best reason to believe, that of his Britannic Majesty's Government, to remove all causes for misunderstanding between the two countries by a previous settlement of all points on which they might probably arise.

Presuming that the state of things produced by the resolution of the Senate above referred to, and the desire expressed by the President to open, carry on, and conclude the negotiation recommended by that body, in the most frank and amicable manner, will convince his Britannic Majesty's Government of the necessity of meeting the offers now made with a correspondent spirit, the undersigned is directed to propose for consideration the propriety of carrying on the negotiation at this place. The aid which the negotiators on both sides would derive from being in the vicinity of the territory in dispute, as well as the information with respect to localities, from persons well acquainted with them, which they might command, are obvious considerations in favor of this proposition.

Until this matter shall be brought to a final conclusion, the necessity of refraining on both sides, from any exercise of jurisdiction beyond the boundaries now actually possessed, must be apparent, and will no doubt be acquiesced in on the part of his Britannic Majesty's provinces, as it will be by the United States.

The undersigned avails himself of this occasion to renew to Mr. Bankhead the assurance of his high consideration.

EDW. LIVINGSTON.

CHARLES BANKHEAD, Esq.,
Chargé d'Affaires of Great Britain.

Mr. Bankhead to Mr. Livingston.

WASHINGTON, July 21, 1832.

The undersigned, his Britannic Majesty's chargé d'affaires, has the honor to acknowledge the receipt of a note addressed to him this day by the Secretary of State of the United States, communicating the reasons which have induced the Senate to advise the rejection of the award of the King of the Netherlands upon the question of the disputed boundary between the United States and his Majesty's province of New Brunswick, and the desire of the President to enter into further negotiation thereupon with his Majesty's Government.

The undersigned has already transmitted a copy of Mr. Livingston's communication to his Government; and he takes this opportunity of renewing to Mr. Livingston the assurance of his most distinguished consideration.

CHARLES BANKHEAD.

The Hon. EDWARD LIVINGSTON, &c.

Sir Charles R. Vaughan to Mr. Livingston.

WASHINGTON, April 14, 1833.

The undersigned, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, having been directed by his Government to open, upon his arrival at Washington, a communication with the Government of the United States upon the question which relates to the long-disputed claims of the two countries, with respect to the boundary between the Northeast portion of the United States and his Majesty's colonial possessions in North America, has already made Mr. Livingston acquainted with the instructions which he has received upon this question, in which his Majesty's Government feels so deep an interest; and the undersigned is authorized by his Government to lay, openly and without reserve, the nature of those instructions in an official note to the Secretary of State, as they contain the answer which his Majesty's Government have decided to make to the note of Mr. Livingston of the month of July last.

His Majesty had indulged a confident hope that the means of adjusting a question which has been the object of fruitless negotiation during a long series of years, and the settlement of which is essential to the preservation of a good understanding between the two countries, had, at length, been attained, by the reference to the arbitration formerly agreed upon and regulated by the convention of the 29th September, 1827; and his Majesty, influenced by an earnest desire to promote the harmony so happily subsisting between his Government and that of the United States, no less than by his sense of the obligations imposed upon him, in common with the American Government, by that convention, did not hesitate to declare his acceptance of the decision of the arbitrator, notwithstanding the large sacrifice which it involved of territory heretofore considered as belonging to the British Crown.

It was not, therefore, without very deep concern, that his Majesty saw his hopes frustrated, and the sacrifice which he had been willing to make rendered unavailing, by the communication contained in the note addressed by the American Secretary of State to the chargé d'affaires of his Majesty at Washington, dated the 21st July, 1832.

By that note his Majesty's Government are informed that the Senate of the United States, to which body the President, as required by the constitution, had submitted the question for its advice, had determined not to consider the decision of the King of the Netherlands upon the line of boundary, which was submitted to his arbitration, "as obligatory," and that they had refused to advise and consent to its execution, on the ground that his Netherland Majesty had abandoned the character of arbitrator, and had assumed that of mediator; and that he had not decided the question submitted to him, or had decided it in a manner unauthorized by the terms of the reference.

The American Secretary of State observes that the validity of the decision would not have been questioned had the arbitrator determined upon and designated any boundary, as that which was intended by the treaty of 1783; but that the line which the King of the Netherlands advises both parties to accept, as one most convenient to them, trenches on the State of Maine, which State denies the constitutional power of the General Government to circumscribe its limits without its consent.

The necessity for further negotiation, according to Mr. Livingston's note, had thus become apparent, to adjust a difference which the arbitrator had failed to decide; and that the President, therefore, in conformity with a resolution of the Senate, proposes to open a new negotiation with his Majesty's Government, "for the ascertainment of the boundary between the possessions of the United States and those of Great Britain, on the Northeastern frontier of the United States, *according to the treaty of peace of 1783.*"

His Majesty's Government regret that they cannot discover in this proposal any probable means of arriving at a settlement of this difficult question. It appears to his Majesty's Government to be utterly hopeless to attempt to find out, at this time of day, by means of a new negotiation, an assumed line of boundary, which successive negotiators, and which commissioners employed on the spot, have, during so many years, failed to discover; and which, finally, an impartial arbitrator, furnished by each claimant with every fact and argument that had been adduced on either side of the question, had declared the impossibility of tracing, in conformity with the description contained in the treaty of 1783.

In a subsequent part of Mr. Livingston's note, the practicability is suggested of a negotiation on a broader principle. He states that, if the negotiators of the two parties should be unable to agree on the true line designated by the treaty of 1783, "means will probably be found of avoiding all constitutional difficulties that have hitherto attended the establishment of a boundary more convenient to both parties than that designated by the treaty, or than that recommended by his Majesty the King of the Netherlands;" and he adds, "that an arrangement is now in progress, with every probability of a speedy conclusion, between the United States and the State of Maine, by which the Government of the United States will be clothed with more ample powers than it has heretofore possessed, to effect that end."

His Majesty's Government will eagerly avail themselves of any probable chance of bringing to a satisfactory settlement a question of such vital consequence to the harmony and good understanding between the two Governments; and the undersigned is instructed to lose no time in endeavoring to ascertain from Mr. Livingston, in the first place, what is

the principle of the plan of boundary which the American Government appear to contemplate as likely to be more convenient to both parties than those hitherto discussed; and, secondly, whether any, and what arrangement, such as Mr. Livingston alludes to, for avoiding the constitutional difficulty, has yet been concluded between the General Government and the State of Maine.

It is necessary that his Majesty's Government should be informed of the basis upon which it is proposed to negotiate, before they can either entertain the proposal, or decide upon the instructions which it may be necessary to give to the minister to whom the negotiation, when agreed to, may be intrusted; and it is specially essential that his Majesty should be previously assured that the President of the United States will possess the power of carrying into full effect his part of any engagement which may be concluded between the plenipotentiaries of the two Governments.

The undersigned is directed to assure the American minister, in making these communications, that if his Majesty's Government shall be enabled, upon receiving satisfactory explanations on the points which have just been mentioned, to acquiesce in the proposition of the Government of the United States, they will enter upon the negotiation which may then be opened in the most friendly spirit, and with the most sincere desire to arrive at a settlement, mutually beneficial to both countries; and he is further to assure Mr. Livingston that his Majesty's Government entirely concur with that of the United States in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction within the disputed territory, beyond the limits within which it has hitherto been usually exercised by the authorities of either party.

It is due, however, to the frankness which his Majesty desires should characterize every communication between the British and American Governments, that the undersigned has received the orders of his Majesty's Government distinctly to declare, in answer to that part of Mr. Livingston's note in which he expresses, for the first time, the wish of the American Government to connect with the discussion of the boundary question that of the navigation of the river St. John, that it will be impossible for his Majesty to admit the principle upon which it is attempted to treat these two questions, as necessarily connected with each other. Whatever might be the eventual decision of his Majesty upon the latter question, if treated separately, and whatever may be his Majesty's disposition to promote the harmony so happily subsisting between the two countries, by any arrangements which might tend to the convenience of the citizens of the United States, without being prejudicial to the essential interests of his own subjects, his Majesty cannot admit any claim of right on the part of the citizens of Maine to the navigation of the St. John's, nor can he consider a negotiation on that point as necessarily growing out of the question of boundary.

His Majesty cannot, therefore, consent to embarrass the negotiation respecting the boundary, by mixing up with it a discussion respecting the navigation of the river St. John, as an integral part of the same question.

The undersigned has the honor to offer to Mr. Livingston the assurance of his most distinguished consideration.

CHAS. R. VAUGHAN.

The Hon. EDWARD LIVINGSTON, &c.

Mr. Livingston to Sir Charles R. Vaughan.

DEPARTMENT OF STATE,
Washington, April 30, 1838.

The undersigned, Secretary of State of the United States, has had the honor to receive from the right honorable Sir Charles R. Vaughan, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, his note of the 14th instant, communicating the substance of the instructions given by his Britannic Majesty's Government in relation to the disputed question of the boundary between the United States and the British province of New Brunswick, and has laid the same before the President, who has directed the undersigned to say that he sees with great pleasure that the British Government concurs with that of the United States in the position that his Netherland Majesty had not decided the question submitted to him, since, by Sir Charles R. Vaughan's note, it is acknowledged that "the arbitrator, furnished by each claimant with every fact and argument that had been adduced on either side of the question, had declared the impossibility of tracing, in conformity with the description contained in the treaty of 1783," the boundary line in question, and as the determination of that line, according to the treaty of 1783, was the only question submitted to the august arbitrator, and he having declared that he found it impossible to trace it in conformity with the treaty, it follows that the inability to decide the point submitted to him, leaves the high parties to the submission precisely in the situation in which they were prior to the selection of his Netherland Majesty to be the arbitrator between them; that is to say, they are thrown back to the convention of the 29th September, 1827.

By that convention it was agreed to submit the question which was the true boundary, according to the treaty of 1783, to the decision of an arbitrator to be chosen between them. The arbitrator selected having declared himself unable to perform the trust, it is as if none had been selected, and it would seem as if the parties to the submission were bound by their contract to select another. But this would be useless if the position assumed by the Government of his Britannic Majesty be correct, that "it would be utterly hopeless, at this time of day, to attempt to find out, by means of a new negotiation, an assumed line of boundary which successive negotiations, and which commissioners employed on the spot have, during so many years, failed to discover." The American Government, however, while they acknowledge that the task is not without its difficulties, do not consider its execution as hopeless. They still trust that a negotiation, opened and conducted in a spirit of frankness and with a sincere desire to put an end to one of the few questions which divide two nations whose mutual interest it will always be to cultivate the relations of amity and a cordial good understanding with each other, may, contrary to the anticipations of his Britannic Majesty's Government, yet have a happy result. But if this should unfortunately fail, other means, still untried, remain. It was, perhaps, natural to suppose that negotiators of the two Powers, coming to the discussion with honest prejudices, each in favor of the construction adopted by his own nation, on a matter of great import to both, should separate without coming to a decision.

The same observation may apply to commissioners, citizens or subjects of the contending parties, not having an impartial umpire to decide between them; and although the selection of a sovereign arbiter would seem to have avoided these difficulties, yet this advantage may have been more than counterbalanced by the want of local knowledge. All the disadvantages of these modes of settlement, heretofore adopted, might, as it appears to the American Government, be avoided by appointing a new commission, consisting of an equal number of commissioners, with an umpire selected by some friendly sovereign from among the most skillful men in Europe, to decide on all points in which they disagree; or by a commission entirely composed of such men, so selected, to be attended in the survey and view of the country, by agents appointed by the parties. Impartiality, local knowledge, and high professional skill, would thus be employed, which, though heretofore separately called into the service, have never before been combined for the solution of the question. This is one mode, and perhaps others might occur in the course of the discussion, should the negotiators fail in agreeing on the true boundary. An opinion, however, is entertained, and has been hereinbefore expressed, that a view of the subject not hitherto taken, might lead to another and more favorable result.

A free disclosure of this view might, according to the dictates of ordinary diplomacy, with more propriety, perhaps, be deferred until those of his Britannic Majesty's Government should be more fully known, or at least until that Government had consented to open a negotiation for determining the boundary; but the plain dealing with which the President desires this and all his other communications with foreign Governments to be conducted, has induced a development of the principle for the consideration of his Majesty's Government.

Boundaries of tracts and countries where the region through which the line is to pass is unexplored, are frequently designated by natural objects, the precise situation of which is not known, but which are supposed to be in the direction of a particular point of the compass. Where the natural object is found in the designated direction, no question can arise. Where the course will not touch the natural boundary, the rule universally adopted is, not to consider the boundary as one impossible to be traced, but to preserve the natural boundary and to reach it by the nearest direct course. Thus, if, after more accurate surveys shall have been made, it should be found that the north course, from the head of the St. Croix, should not reach the highlands which answer the description of those designated in the treaty of 1783, then, a direct line from the head of the St. Croix, whatever may be its direction, to such highlands, ought to be adopted, and the line would still be conformable to the treaty. As this principle does not seem, hitherto, to have been adopted, it appears to the Government of the United States to offer to the commissioners who may be appointed the means of an amicable adjustment.

When the note of the undersigned to Mr. Bankhead, of July last, was written, reasonable hopes were entertained that the arrangement spoken of in that note, by which the Government of the United States might be enabled to treat for a more convenient boundary, would, ere this, have taken place. The anticipations then entertained have not, as yet, been

realized, and the Government of the United States can only, in the present state of things, treat on the basis of the establishment of the boundary presented by the treaty.

As the suggestion in relation to the navigation of the St. John's was introduced only in view of its forming a part of the system of compensations in the negotiation for a more convenient boundary, if that of the treaty of 1783 should be abandoned, it is not now insisted on.

In conclusion, the President has remarked, with sincere pleasure, in Sir Charles Vaughan's note, the expression of a desire on the part of his Government to cultivate and increase the harmony and good understanding which so happily subsists between the two countries, and to put an end to all questions that may in the least degree interrupt it—a disposition which is warmly reciprocated by the President.

The undersigned avails himself of this occasion to offer to Sir Charles R. Vaughan the expression of his highest consideration.

ED'W LIVINGSTON.

The Right Hon. Sir CHARLES R. VAUGHAN,
*Envoy Extraordinary and Minister
Plenipotentiary of his Britannic Majesty.*

Sir Charles R. Vaughan to Mr. Livingston.

WASHINGTON, May 11, 1833.

The undersigned, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, has the honor to acknowledge the receipt, on the 6th instant, of the note of the Secretary of State of the United States, dated the 30th April, in answer to the communication made by the undersigned, of the instructions which he has received from his Government relative to the disputed boundary, and he begs leave to make some observations before he submits it to the consideration of the British Government.

With regard to the entire concurrence of his Majesty's Government with that of the United States, "in the position that his Netherland Majesty has not decided the question submitted to him, because he had declared it impossible to trace the boundary according to the treaty of 1783." Though both Governments must agree in the impossibility of tracing a boundary line by the defective description of it in that treaty, the two Governments took very different views of the nature of the obligations which they had incurred in common under the convention of arbitration. Great Britain felt bound to accept the award of the arbitrator, who suggested a line of boundary, having been unable to trace that described in the treaty, notwithstanding that the acceptance would cause a great sacrifice of territory hitherto considered as belonging to the British crown. According to the note of Mr. Livingston, of the 21st July, 1832, the Senate of the United States "determined not to consider the decision of the King of the Netherlands as obligatory, and they refused to advise and consent to its execution." This rejection of the decision of the arbitrator by the Government of the United States

has thrown the parties, as Mr. Livingston observes, into the situation in which they were prior to the selection of his Netherland Majesty to be the arbitrator between them. It may be observed, also, that though the tracing of the boundary line, according to the treaty of 1783, appeared, from the statements delivered by the respective parties, to be the principal object of arbitration, the King of the Netherlands was invited, in general terms, "to be pleased to take upon himself the office of arbitration of the differences between the two Governments." It was a measure adopted in order to put an end to tedious and unsatisfactory negotiations which had occupied the attention of the Government for more than forty years; and, by the seventh article of the convention, it was agreed "that the decision of the arbiter, when given, shall be taken as *final and conclusive*, and shall be carried, without reserve, into immediate effect."

The undersigned cannot but regret the rejection of the decision of the King of the Netherlands, when he sees, throughout the note of Mr. Livingston, all the difficulties which attend the endeavors of the two Governments, actuated by the most frank and friendly spirit, to devise any reasonable means of settling this question.

Mr. Livingston seems to be persuaded that a renewed negotiation may yet have a happy result, and the undersigned observes with satisfaction that the Government of the United States has consented not now to insist upon the navigation of the St. John's river, a claim which the British Government refused to consider in connexion with the boundary question. But the arrangement in progress last summer having failed, which was to result in enabling the General Government to treat for a more convenient boundary, that Government, in the present state of things, can only treat on the basis of the establishment of the boundary presented by the treaty.

The undersigned is convinced that it is hopeless to expect a favorable result from a renewed negotiation upon that basis.

With regard to Mr. Livingston's proposal that, in the event of negotiation failing, the two Governments may have recourse to a commission of boundary, composed of equal numbers, selected by each party, to be attended by an umpire chosen by a friendly sovereign, to decide at once all disputed points; or, that a commission of some of the most skilful men in Europe should be selected by a friendly sovereign, and should be sent to view and survey the disputed territory, attended by agents appointed by the parties; the undersigned can only express his conviction that, after the expense, delay, and unsatisfactory result of the commission of boundary under the fifth article of the treaty of Ghent, it must be with great reluctance that the British Government consents to have recourse to such a measure. He does not conceive that it would be an easy task to engage, in such a service, "all the impartiality, local knowledge, and high professional skill" which it would be necessary "to combine for the solution of the question" to be submitted, and which either the umpire in the one instance, or the commission of scientific persons in the other, were to decide peremptorily.

The undersigned does not sufficiently comprehend the other view which Mr. Livingston has partially developed in his note, and which the latter conceives might lead to a more favorable result. It seems applicable to the manner in which the line due north from the sources of the

St. Croix river may be drawn, in conformity with the treaty of 1783, though not strictly according to the terms in which that article is drawn up. The natural feature on the boundary, which Mr. Livingston supposes to exist, and to which the line in question is to be drawn, it is presumed, are the highlands mentioned in the treaty, the fixing the position of which highlands has formed the principal difficulty, hitherto, in adjusting the boundary. A deviation from the direct north line laid down in the treaty, might lead to an oblique line being drawn to mountains to the eastward of it, which would trench upon his Majesty's territories of New Brunswick. The undersigned, however, does not venture, with the imperfect knowledge which he has of all the bearings of the view developed by Mr. Livingston, to do more than suggest a doubt of its advantages.

The rejection of the award of the arbitrator, by the Government of the United States, revives to their full extent the pretensions of Great Britain, and it becomes an object of great importance to put an end to this question of boundary; "one of the few questions," as Mr. Livingston observes, "which divide two nations whose mutual interest it will always be to cultivate the relations of amity, and a cordial good understanding with each other."

It is the duty of the undersigned to transmit immediately to his Government the note of Mr. Livingston; but, at the same time, he cannot resist from inviting the Secretary of State of the United States to offer, without waiting the result of that reference, some more prompt and effective measure for the settlement of the boundary than the renewal of a negotiation on an inadmissible basis, or recourse again to commissions of boundary, which, though upon an improved plan, so far as the ensuring of a final result may be concerned, are too complicated in their nature to bring about a speedy or a satisfactory decision.

The undersigned has the honor to renew to the Secretary of State the assurance of his most distinguished consideration.

CHARLES R. VAUGHAN.

The Hon. EDWARD LIVINGSTON, &c.

Mr. Livingston to Sir Charles R. Vaughan.

DEPARTMENT OF STATE,

Washington, May 28, 1833.

SIR: In the two conversations we have had, on the 13th and 27th instant, you requested some further development of the propositions contained in my note of the 30th April.

The principal object of that note was to show that the failure of the several endeavors which had been made to ascertain the true boundary between the United States and the British provinces of New Brunswick and Lower Canada ought not, as is thought by his Britannic Majesty's Government, to be attributed to any insuperable difficulty, but rather to the inefficiency of the means heretofore resorted to in order to secure such a decision as should be binding on both parties, and to the want of atten-

tion by the commissioners and arbiter severally employed for that purpose, to an established rule in the settlement of boundaries.

The first point seems to be fully explained in my note above referred to, and I repeat that the President will agree to either of the modes therein suggested, to secure a final decision of the question. The reasons why, under the present circumstances, he cannot undertake to negotiate upon any other basis than that of the treaty of 1783, drawn from the nature of our Government, were fully explained to you in those conversations. And the probability of ascertaining the boundary according to that treaty, by applying the principle to which I, perhaps, too briefly alluded in my note, was further developed. That you may present it in a more precise form to your Government, I now repeat the substance of my observations.

The boundary, as far as the head of the river St. Croix, is ascertained and agreed upon by both nations. The monument erected there is then a fixed point of departure. From thence we have a two-fold description of boundary : a line in a certain direction, and a natural object to which it was supposed the line in that direction would lead ; " a line from the source of the river St. Croix directly north," and the highlands which divide the waters that flow into the Atlantic ocean from those which flow into the river St. Lawrence. The American Government have believed that these two descriptions would coincide, that is to say, that the highlands designated by the treaty would be reached by a north line drawn from the head of the St. Croix. They make no pretensions further east than that line ; but if, on a more accurate survey, it should be found that the north line mentioned in the treaty should pass each of the highlands therein described, and that they should be found at some point further west, then the principle to which I refer would apply, to wit : that the direction of the line to connect the two natural boundaries must be altered so as to suit their ascertained position. Thus, in the annexed diagram, suppose A the monument at the head of the St. Croix, A B the north line drawn from them. If the highlands described in the treaty should be found in the course of that line, both the descriptions in the treaty would be found to coincide and the question would be at an end ; if, on the contrary, those highlands should be found at C or D, or any other point west of that line, then the Eastern boundary of the United States would be the line A C or A D, or any other line drawn directly from the point A to the place which should be found to answer the description of the highlands mentioned in the treaty.

This being fully understood, the President is willing, in order to simplify the operation, that the commission should be restricted to the simple question of determining the point designated by the treaty as the highlands which divide the waters, to which point a straight line shall be drawn from the monument, and this line shall, as far as it extends, form part of the boundary in question ; that they shall then designate the course of the line along the highlands, and fix on the point designated as the northwesternmost head of the Connecticut river.

It will be obvious to you, sir, that, until a survey and decision shall be had in one of the modes pointed out in my note, or in some other to be agreed on ; that the President cannot designate any line which he would be willing to adopt as the boundary ; but he directs me to repeat

his firm persuasion that a speedy and satisfactory arrangement may be made by a negotiation carried on by both parties in the spirit of conciliation by which he is actuated, and which, he has not the least doubt, will direct the Government of his Britannic Majesty.

I have the honor to be,

Very respectfully,

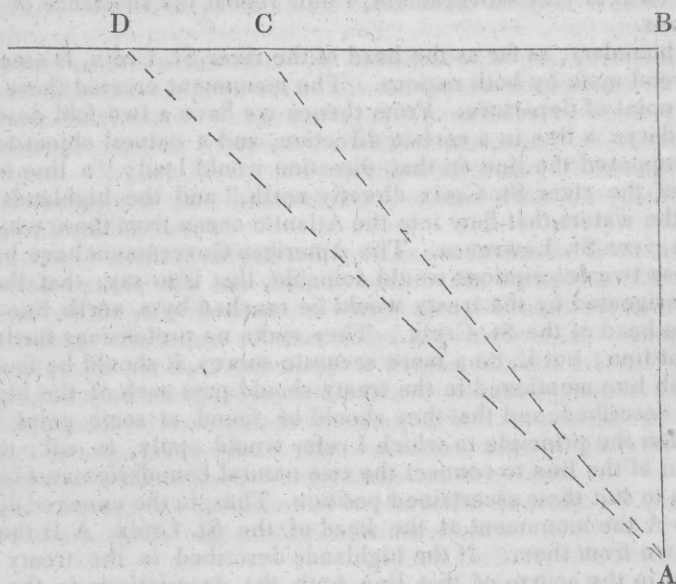
Your most obedient servant,

EDWARD LIVINGSTON.

Right Hon. Sir CHARLES R. VAUGHAN,

Envoy Extraordinary and Minister

Plenipotentiary of his Britannic Majesty.



Sir Charles R. Vaughan to Mr. McLane.

WASHINGTON, May 31, 1833.

The undersigned, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, has the honor to acknowledge the receipt of a note from Mr. Livingston, dated 28th May, and previously to the appointment of Mr. McLane as Secretary of State of the United States, explaining a proposition made by the former in a note dated 30th April, relative to a new manner in which the boundary line might be traced between the possessions of his Majesty and those of the United States.

The undersigned observes, with great satisfaction, the desire of the Government of the United States, as manifested in the proposal of Mr. Livingston, to devise some mode by which the question of boundary may be finally settled, but he at the same time regrets that he cannot anticipate the favorable result expected by Mr. Livingston, should the two Governments adopt his proposal.

The undersigned is led to believe, after the communication which he has lately had, both with Mr. Livingston and Mr. McLane, that insuperable constitutional difficulties impose upon the Government of the United States a restriction to treat only of a line of boundary according to the terms of the treaty of 1783. That the only deviation, therefore, which can be admitted in tracing the boundary, from the strict terms of the treaty, is an abandonment of the direct due north line from the St. Croix, which has been hitherto followed in search of the highlands of the treaty, and a permission to be given to a joint commission to be sent expressly to examine the country, to follow an oblique line to the westward of the direct north line, until they shall meet with highlands answering the description given of them in the treaty, as dividing rivers falling into the Atlantic from those which fall into the St. Lawrence. A line drawn to them, wherever they may be found, from the monument at the source of the St. Croix, would be such a compliance with the description of the boundary laid down in the treaty, as to remove all constitutional difficulties in the way of the Government of the United States, and enable it to fix that line as the line of boundary.

It is not for the undersigned to discuss the nature of the constitutional difficulties mentioned by Mr. Livingston. It is to be lamented that they are stated to be insurmountable, and that the proposition of Mr. Livingston, after a discussion which has occupied the two Governments from time to time for upwards of forty years, is the only offer which the British Government can expect to receive from the Government of the United States. It appears to the undersigned that the time is now arrived when this perplexed and hitherto interminable question can only be set at rest by an abandonment of the defective description of boundary contained in the treaty, by the two Governments mutually agreeing upon a conventional line of boundary more convenient to both parties than those insisted upon by the commissioners of boundary under the 5th article of the treaty of Ghent, or the line suggested by the King of the Netherlands.

The proposition of Mr. Livingston very justly provides against any deviation eastward from the direct north line from the St. Croix; but the operation which it contemplates is still so restricted to the terms of the treaty, that the basis of it is the same as that which the undersigned has been instructed by his Government to inform the Government of the United States that it was hopeless to negotiate upon. The lines of boundary laid down by the commissioners who framed the treaty of 1783, may fairly be considered as imaginary, arising from their ignorance at the time of the actual geography of the country. The point of departure of the boundary line was not settled until upwards of ten years after it had been so confidently laid down in the treaty, when a commission under the treaty of 1794 ascertained what river was to be considered as the St. Croix. In 1814 no less than four commissions were appointed under the treaty of Ghent to discover and trace as many portions of the line of boundary laid down in the treaty of 1783.

The point of departure of the line to be traced according to the proposition of Mr. Livingston, is clearly established; but the point at which it is to terminate is left in doubt, and to be decided by the special commission charged to find out highlands answering to the description in the

treaty, westward of the direct line which has alone been hitherto explored. The undersigned wishes to be informed what limitations it is intended to put upon the course to be followed by the special commission. The diagram which is annexed to Mr. Livingston's note does not explain whether the attention of the commissioners is to be directed to any particular spot, or whether they are to be left at liberty to stop at the first highlands answering the required description with which they may meet after their departure from the monument. It should be recollected that Great Britain has hitherto insisted upon the highlands of the treaty of 1783 being sought for exclusively *south* of the St. John's river; and she denies the claim of the United States to any territory north of the St. John's. The omission of all mention of so remarkable a feature in the boundary as the intersection of that river, both in the treaty and in the accounts extant of the negotiations, justifies the inference that the commissioners who formed that treaty did not contemplate the existence *north* of the St. John's, of the highlands which they described.

The undersigned must here remind the Secretary of State of the United States that the British Government, by the rejection of the decision of the King of the Netherlands, is at liberty to recur to their former position before the arbitration, and to maintain the claims and pretensions they originally established. A strong point in those claims is the exclusive possession of the St. John's. Nor must it be inferred that Great Britain, by having expressed a willingness to accept the line of boundary suggested by the arbiter, which intersected the St. John's, is in any shape prepared now to surrender that claim without a due equivalent.

The undersigned begs leave to observe that the impression left upon his mind, after his conversation with Mr. Livingston, and the production by him of a map upon a small scale, is, that the highlands to be sought in the manner he proposed, would probably be found north of the St. John's, but westward some miles of the river St. Francis. A subsequent conversation with Mr. McLane left the impression that the special commission would have their attention directed to an examination of the country along the line assumed as the boundary by the American commissioners under the treaty of Ghent.

The delay occasioned by a reference to his Government, imposes upon the undersigned the obligation of endeavoring to investigate fully, and to seek every explanation of this proposition made by Mr. Livingston, as a means of settling the question of boundary, before he submits it to the consideration of his Majesty's Government. From what has been already stated in this note, the undersigned will be happy to receive from Mr. McLane some further explanation of the intended course to be pointed out to the special commissioners, who, he takes it for granted, are to be appointed in one of the two forms stated by Mr. Livingston in his note of the 30th April. If it is in the contemplation of the American Government to seek the highlands north of the St. John's, and upon the line assumed by the American commissioners under the treaty of Ghent, the assent of the British Government to the proposition of Mr. Livingston would concede to the Government of the United States nearly all that they have hitherto claimed, and place the British Government in an infinitely worse position than they were willing to accept, at a great sacrifice of territory, by acquiescing, as they thought themselves bound to do, in the award of the arbiter.

The obscurity which, after all the endeavors of the two Governments, still rests upon the position of the highlands, the Secretary of State, I trust, will allow, throws some difficulty, without further explanation, in the way of acceding to the proposition of Mr. Livingston.

The undersigned has the honor to offer to Mr. McLane the assurance of his highest consideration.

CHARLES R. VAUGHAN.

The Hon. LOUIS McLANE.

Mr. McLane to Sir Charles R. Vaughan.

DEPARTMENT OF STATE,

Washington, June 5, 1833.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of a note from the right honorable Sir Charles R. Vaughan, envoy extraordinary and minister plenipotentiary of his British Majesty, dated the 31st of May, requesting further explanations of the proposition made by Mr. Livingston, in his note of the 30th April, and by him further explained in that of the 28th May, relative to a new manner in which the boundary line might be traced between the possessions of the United States and of his Britannic Majesty's Government, on the Northeastern frontier.

The undersigned has submitted Sir Charles R. Vaughan's note to the President; and has the honor to state that, anxiously desiring finally to settle this question of boundary, and entertaining the fullest confidence that the proposal already made under his direction will accomplish that object satisfactorily to both nations, the President readily directs such further explanations to be given as will render that proposition entirely explicit and intelligible.

The undersigned concurs with Sir Charles R. Vaughan in avoiding at this time any particular discussion of those constitutional difficulties which restrict the United States to a line of boundary according to the treaty of 1783, more especially as they have been recently explained to Sir Charles R. Vaughan, and must be well understood by him.

In regard, however, to the suggestion of Sir Charles R. Vaughan that the time has now arrived when this perplexed and hitherto interminable question can only be set at rest by an abandonment of the defective description of boundary contained in the treaty, by the two Governments mutually agreeing upon a conventional line of boundary more convenient to both parties than that insisted upon by the commissioners under the fifth article of the treaty of Ghent, or the line suggested by the King of the Netherlands, it may be proper to remark that the embarrassments, in tracing the boundary in the treaty of 1783, arose more from the principles assumed, and in the manner of seeking for it, than from any real defect in the description when properly understood; and that, in the present state of this business, the suggestion of Sir Charles R. Vaughan would rather add to than obviate the constitutional difficulties, already insuperable.

These difficulties arise from a denial of the power of the General Government, under the constitution of the United States, to dispose of

any portion of territory belonging to either of the States composing the Union.

The territory of the State of Maine is supposed to comprehend all the land which would be thrown within her limits by establishing the true line of the treaty of 1783, and as any conventional line south of the true line of the treaty would deprive her of so much of her territory, it could not be adopted, unless on grounds of greater public necessity than at present exists, without the consent of that State. It is not probable that such consent would be given by the State of Maine while there remained a reasonable prospect of discovering the line of the treaty of 1783, and, for the same reason, the President would not be authorized, after the recent proceedings in the Senate, to venture now to agree upon a conventional line, without such consent.

Under these circumstances the President directed the proposition submitted in Mr. Livingston's note of the 30th April, as affording, not only a reasonable prospect, but, in his mind, the certain means of ascertaining the boundary called for by the treaty of 1783, and of finally terminating all the perplexities which have encompassed that subject.

In reply, therefore, to the wish expressed by Sir Charles R. Vaughan, to be informed what limitations it is intended to be put upon the course to be pursued by the special commissioners; whether their attention is to be directed to any particular spot, or whether they are to be left at liberty to stop at the first highlands answering the required description with which they may meet after their departure from the monument; the undersigned has the honor to state that it is not expected that any limitations will be put upon the course to be pursued by the special commissioners but such as are required by a faithful adherence to the description of boundary in the treaty of 1783.

It is true that Great Britain has hitherto insisted upon the highlands of the treaty of 1783 being sought for exclusively south of the St. John's river; but it is also true that the United States have, with equal confidence and pertinacity, insisted upon seeking for them exclusively north of that river.

It is the difficulty of reconciling these conflicting pretensions which has hitherto prevented the settlement of the boundary question, arising, chiefly, however, from the impracticability of finding a point of highlands answering the description in the treaty, to which a line due north from the monument could be drawn.

It is now proposed, therefore, to make another effort, and by means which heretofore have not been tried, to overcome this difficulty, and discarding the due north line, should that become necessary, to seek for, and find, in the first place, the "highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean;" and when these shall be found in any part of the disputed territory, north or south of the St. John's river, to draw a line from the monument to the said highlands, and to that point thereof which shall be nearest to a due north line from the monument. Mr. Livingston, in his note of the 28th May, has already provided against any deviation eastward from the direct north line from the St. Croix.

The undersigned avails himself of this occasion to offer to Sir Charles R. Vaughan the assurance of his highest consideration.

LOUIS McLANE.

Sir Charles R. Vaughan to Mr. McLane.

WASHINGTON, *June 6, 1833.*

The undersigned, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, hastens to acknowledge the receipt of the note of the Secretary of State of the United States, affording him the further explanation which he thought it his duty to require of the proposition made by Mr. Livingston for settling the boundary.

The undersigned begs leave to express his satisfaction upon learning that the President directed an immediate answer to be given to his inquiries, and an assurance that no limitations are to be put upon the course of the proposed commission, which is to endeavor to find highlands separating waters as described in the treaty of 1783, in any part of the disputed territory, north or south of the St. John's.

The undersigned will lose no time in submitting the proposition made by the Government of the United States to his Majesty's Government, as the President, it appears from Mr. McLane's note, is not authorized, after the recent proceedings in the Senate, to agree upon a conventional line of boundary, without the consent of the State of Maine, which it is not probable will be given while there remains a reasonable prospect of discovering the line of the treaty of 1783.

The undersigned has the honor to renew to Mr. McLane the assurance of his highest consideration.

CHAS. R. VAUGHAN.

Hon. LOUIS McLANE, *Secretary of State.*

Sir Charles R. Vaughan to Mr. McLane.

WASHINGTON, *February 10, 1834.*

The undersigned, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, has the honor to submit, by direction of his Government, the following observations to the Secretary of State of the United States, on the subject of that constitutional difficulty by which the American Government, according to a late correspondence with Mr. Livingston, is prevented from acquiescing in the arrangement recommended by the King of the Netherlands for the final settlement of the boundary in the neighborhood of the river St. John.

The constitutional difficulty in question is stated to be the want of authority in the Government to cede territory belonging to any one of the States of the Union; and it arises, on the present occasion, in consequence of an objection advanced by the State of Maine.

The Government of Maine assumes that the treaty of 1783 has given to that State a perfect title to all the territory lying to the southward of the highlands north of the St. John's, and to the westward of the meridian of the head of the St. Croix. The State of Maine can have no other title to this territory than that which she derives from the treaty; and if the treaty is found to have left that title imperfect, the assumption that the territory claimed under it is the territory of Maine, falls to the ground,

and that assumption is the basis of the constitutional objection by which the American Government conceives itself fettered.

The arbiter has certainly failed to establish a boundary, such as is described by the treaty, for the whole of the interval between the source of the St. Croix and those highlands which divide the waters of the Chaudiere from those of the Kennebec; but he has at least determined what is *not* that boundary. He has decided, for instance, in opposition to the claim of Great Britain, that the boundary to be sought for does not lie along the highlands to the south of the St. John's; but he has equally decided that it is not along the highlands claimed by America to the north of the St. John's. For, by declaring that the rivers St. John and Ristigouche are not Atlantic rivers, within the meaning of the treaty, and further, that the treaty requires an immediate division of rivers by the highlands, and is not satisfied by an immediate division in one direction and a mediate division in the other, he has decided that neither the highlands claimed by Great Britain nor those which are claimed by America, fulfil both of the necessary conditions. The arbiter's opinion is, that each of those ranges of highlands fulfils one of those conditions and fails to fulfil the other; that it is geographically impossible that there should exist highlands east of the sources of the St. John's, which can fulfil both of them together, and consequently, that the territory which lies between the highlands claimed by Great Britain and those claimed by the United States respectively, is not the absolute property of either party, but is, in some proportion or other to be hereafter determined, the property of both; that the territory, if not entirely British, is also not entirely American, and therefore is not such territory as the American Government can be precluded by the constitution from relinquishing.

The only part of the territory in question to which the Government of the United States cannot constitutionally give up its claim, is that part which belongs of right to Maine, according to the treaty of 1783. But the arbiter has clearly decided that the whole of the disputed territory does not so belong to the State of Maine, and finding it impossible to determine how much of it is so belonging to Maine, he recommends a compromise, by which the contending parties should settle their differences.

The undersigned has the honor to renew to Mr. McLane the assurance of his most distinguished consideration.

CHAS. R. VAUGHAN.

The Hon. LOUIS McLANE, *Secretary of State*.

Sir Charles R. Vaughan to Mr. McLane.

WASHINGTON, February 10, 1834.

His Britannic Majesty's Government having given the most attentive and deliberate consideration to the several communications received from the Government of the United States upon the important subject of the Northeastern boundary, the undersigned has received his Majesty's commands to make the following communication to the American Government in reply.

His Majesty's Government have great pleasure in acknowledging the

friendly spirit which pervades the communications of the Government of the United States on this subject. Desirous as his Majesty's Government are to confirm and perpetuate the good understanding which so happily subsists between the two countries, they naturally feel anxious to bring to an amicable adjustment a question which has so long remained unsettled, and they cannot but flatter themselves that, through a conciliatory disposition on both sides, the remaining difficulties might be overcome.

His Majesty's Government trust that they gave a proof of this disposition on their part, when they intimated to the Government of the United States that not only were they prepared to abide, as they consider both parties bound to do, by the decisions of the King of the Netherlands upon such of the points referred to him upon which he has pronounced a decision, but that they were willing to agree to the compromise which that sovereign has recommended, upon the single point upon which he found it impossible to make a decision strictly conformable with the terms of the treaty.

The Government of the United States has not hitherto concurred with that of his Majesty in this respect. But as such a course of proceeding on the part of the two Governments would lead to the speediest and easiest settlement, it is the wish of his Majesty's Government to draw the attention of the American cabinet to some considerations on this subject, before they advert to the new proposition made to the undersigned by Mr. Livingston.

It is manifest that nothing but a sincere spirit of conciliation could induce his Majesty's Government to agree to the adoption of the arrangement recommended by the King of the Netherlands, because the boundary which he proposes to draw between the two parties would assign to the United States more than three-fifths of that disputed territory, to the whole of which, according to the terms of the award itself, the title of the United States is defective in the same degree as that of Great Britain.

But it seems important, in the first place, to consider what the reference was which the two parties agreed to make to the King of the Netherlands, and how far that sovereign has determined the matters which were submitted for his decision.

Now, that which the two Governments bound themselves to do by the convention of the 29th September, 1827, was to submit to an arbiter certain "points of difference which had arisen in the settlement of the boundary between the British and American dominions," and to abide by his decision on those points of difference; and they subsequently agreed to name the King of the Netherlands as their arbiter. The arbiter then was called upon to determine certain questions; and if it should appear that he has determined the greater part of the points submitted to him, his decisions on those points cannot be rendered invalid by the mere circumstance that he declares that one remaining point cannot be decided in any manner that shall be in strict conformity with the words of the treaty of 1783, and that he consequently recommends to the two parties a compromise on that particular point.

The main points referred to the King of the Netherlands were the three following:

First. Which is the spot designated in the treaties as the northwest angle of Nova Scotia, and which are the highlands dividing the rivers

that empty themselves into the river St. Lawrence from those falling into the Atlantic ocean, along which highlands is to be drawn the line of boundary from that angle to the northwest head of the Connecticut river?

Secondly. Which is the northwest head of the Connecticut river?

Thirdly. Which is the boundary to be traced from the river Connecticut along the parallel of 45th degree of north latitude to the river St. Lawrence, called in the treaties Iroquois, or Cataraquy?

Now, without adverting for the present to the opinion of the arbiter on the first point, the undersigned has to remark that, on the second point, he has given a positive decision, strictly confined within the limits of the reference, and to which no objection, even of a technical nature, can by possibility be urged.

On the third point, also, the arbiter has given a positive decision; and he has declared that the 45th degree of latitude should be determined by observation. He has indeed added to this decision a recommendation that Rouse's point, and a surrounding circle, with a radius of one kilometre, shall belong to the United States, whether Rouse's point be, or be not, included within the territory of the United States, according to the boundary to be drawn by astronomical observation. And his Majesty's Government, in subscribing to the decision of the arbiter on this point, which, like his decision on the second, they consider to be binding on both parties, declares itself willing to accede to the above-stated recommendation.

It appears, then, that upon two points out of the three, the arbiter has made a plain and positive decision.

Upon the remaining point he has declared that it is impossible to find a spot, or to trace a line, which shall fulfil all the conditions required by the words of the treaty, for the northwest angle of Nova Scotia, and for the highlands, along which the boundary is from that angle to be drawn; and he consequently recommends to the two parties a line of boundary which he considers conformable with the spirit of the treaty, and to approach the most nearly to the probable intention of its framers; and this line the British Government is still willing to adopt. But though the arbiter has declared that it is not possible to find a northwest angle for Nova Scotia, nor a separating range of highlands, which shall be precisely conformable with the words of the treaty, yet, in the course of his reasoning upon this point, he has decided several questions connected with it, upon which the two parties had entertained different views; and it is the opinion of his Majesty's Government that the decisions of the arbiter upon these subordinate questions ought to be acquiesced in by the two Governments. They think that the spirit of the agreement to make the reference, requires that the two parties should so acquiesce; and they are, moreover, of opinion that, by doing so, the two Governments would clear away several of the remaining points of difference, and materially facilitate an amicable adjustment of the rest.

1st. The arbiter expresses his opinion that the term "highlands" may properly be applied not only to a hilly and elevated country, but to a tract of land which, without being hilly, divides waters flowing in different directions; and, consequently, according to this opinion, the highlands to be sought for are not necessarily a range of mountains, but rather the summit-level of the country.

2d. The arbiter expresses his opinion that an inquiry as to what were the ancient boundaries of the North American provinces, can be of no use for the present purpose, because those boundaries were not maintained by the treaty of 1783, and had in truth never been distinctly ascertained and laid down.

3d. The arbiter declares that the northwest angle of Nova Scotia, mentioned in the treaty of 1783, is not a point which was then known and ascertained; that it is not an angle which is created by the intersection of any lines of boundary at that time acknowledged as existing, but that it is an angle still to be found, and to be created by the intersection of new lines, which are hereafter to be drawn in pursuance of the stipulations of the treaty; and further, that the nature of the country eastward of the said angle affords no argument for laying that angle down in one place rather than in another.

4th. He states that no just argument can be deduced for the settlement of this question from the exercise of the rights of sovereignty over the fief of Madawaska and over the Madawaska settlement.

5th. He declares that the highlands contemplated in the treaty should divide immediately, and not mediately, rivers flowing into the St. Lawrence and rivers flowing into the Atlantic; and that the word "divide" requires contiguity of the things to be divided.

6th. He declares that rivers falling into the bay of Chaleur and the bay of Fundy cannot be considered, according to the meaning of the treaty, as rivers flowing into the Atlantic; and specifically, that the rivers St. John and Ristigouche cannot be looked upon as answering to the latter description.

7th. He declares that neither the line of boundary claimed by Great Britain, nor that claimed by the United States, can be adjudged as the true line, without departing from the principles of equity and justice as between the two parties.

Now, whether the two parties adopt the mode of settlement recommended by the arbiter, and agree to divide between them, in some proportion or other, the disputed territory, or whether they shall still make another attempt to trace a boundary in strict conformity with the words of the treaty, in either case it appears to his Majesty's Government that it would be necessary to adopt these seven decisions of the arbiter as a groundwork for further proceedings; and it seems that no satisfactory or useful result could be obtained from the local survey proposed by the American Government, until the two parties are agreed upon these seven points.

But, with respect to the proposition made by the American Government, the first question which presents itself is, whether there is any reasonable probability that a fresh local survey, to be made in the manner suggested, would afford a solution of the remaining problem.

The treaty requires that highlands should be found dividing rivers which fall into the St. Lawrence from rivers which fall into the Atlantic ocean; and that those highlands should be found in a direction due north from a spot, which has already been determined, namely, the source of the St. Croix.

Now, every thing which is known of the geography of the country tends to show that no such highlands can be found in that particular me-

ridian ; and the American Government, almost admitting that fact, suggests that the required highlands should be sought for in a northwesterly direction from the ascertained spot. No doubt can exist that, by going far enough to the westward, such highlands as those required by the treaty could be found, because it is well known that the high ground in the neighborhood of the source of the St. John's divides the Kennebec, which falls into the Atlantic, from the Chaudiere, which falls into the river St. Lawrence.

But the difficulty which is said to prevent the Government of the United States from acquiescing in the recommendation of the King of the Netherlands, is, that the Federal Government has no authority to agree to any other line of boundary than that which is described by the treaty which constituted the United States ; at least not to any other line which might imply a cession of any part of the territory to which the treaty, as hitherto interpreted by the United States, may appear to entitle one of the component States of the Union.

But if this objection is insurmountable, as against the line recommended by the King of the Netherlands, would it not be equally fatal to that suggested by Mr. Livingston ? Because, if the boundary was formed by a line drawn from the head of the St. Croix to highlands found to the westward of the meridian of that spot, that boundary would not be the boundary of the treaty ; seeing that the treaty requires the boundary to be run along the meridian of the head of the St. Croix ; and that the State of Maine might object to any deviation from the line of the treaty in a westerly direction, as justly as it could to any deviation from that line in a southerly direction. Nay, it might object with more appearance of reason to a westerly departure from a real meridian, which is distinctly specified in the treaty, than to a departure southward from an imaginary line, which is only described in the treaty, and the finding of which is a thing that has not yet been accomplished.

The present state of the case, therefore, seems to be this : That to carry the treaty strictly and literally into execution, is physically and geographically impossible ; and that there exist constitutional difficulties in America, which have not yet been surmounted, which prevent the Government of the United States from agreeing to a compromise.

Upon a full view of this matter, then, his Majesty's Government think that, in the first place, and previously to any further negotiation, they are entitled to claim from the Government of the United States an acquiescence in the decisions pronounced by the arbiter upon all those points which he has decided ; and in the next place, that, as a preliminary to any attempt (in which his Majesty's Government would gladly concur) to settle the remaining point by negotiation, they ought to be satisfied that the Government with which they will have to treat is possessed of the powers necessary for carrying into effect any arrangement upon which the two parties might agree.

The undersigned has the honor to renew to Mr. McLane the assurance of his most distinguished consideration.

CHAS. R. VAUGHAN.

Hon. LOUIS McLANE, &c.

Mr. McLane to Sir Charles R. Vaughan.

DEPARTMENT OF STATE,

Washington, March 11, 1834.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Sir Charles R. Vaughan, envoy extraordinary and minister plenipotentiary of his Britannic Majesty, of the 10th ultimo, communicating the views entertained by his Majesty's Government of the proposition submitted by direction of the President, in a letter from Mr. Livingston of the 30th of April last, for the settlement of the question respecting the Northeast boundary.

The undersigned has submitted Sir Charles R. Vaughan's note to the President, and has received his directions to make the present reply.

The President perceives with pleasure a spirit on the part of his Majesty's Government corresponding with that with which he is actuated, in his endeavors finally to settle a subject so important to the amicable relations between the two countries; and although he cannot concur in all the views which Sir Charles R. Vaughan has been commanded to present, he entertains the hope that the spirit in which they have been presented may yet recommend the acceptance of the proposition authorized by the President, in relation to what is understood to be the chief difficulty in ascertaining the true boundary, according to the treaty of 1783.

In his note of the 10th instant, Sir Charles R. Vaughan in substance remarks that, by the convention of the 29th September, 1827, the two Governments bound themselves to submit to an arbiter certain points of difference which had arisen in the settlement of the boundary between the British and American dominions; that the arbiter was thus called on to determine certain questions, and that if he has determined the greater part of the points submitted to him, his decision on those points ought not to be disregarded merely because he declares that one remaining point cannot be decided in any manner in conformity with the words of the treaty of 1783, and therefore recommends to the two parties a compromise on that particular point. Sir Charles R. Vaughan also remarks that the main points referred to the arbiter were the three following:

1. Which is the spot designated in the treaties as the northwest angle of Nova Scotia, and which are the highlands dividing the rivers that empty themselves into the river St. Lawrence from those falling into the Atlantic ocean, along which highlands is to be drawn the line of boundary to the northwest head of the Connecticut river?

2. Which is the northwest head of the Connecticut river?

3. Which is the boundary to be traced from the river Connecticut, along the parallel of the forty-fifth degree of north latitude to the river Iroquois, or Cataraquy, (St. Lawrence,) as intended by the treaty of 1783?

Sir Charles R. Vaughan likewise supposes that, upon the second and third of these points, the arbiter has given a decision to which no objection can be urged. Sir Charles R. Vaughan also proceeds to state that, although the arbiter has declared that it is impossible to find a spot or to trace a line which shall fulfil all the conditions required by the words

of the treaty, for the northwest angle of Nova Scotia, and for the highlands along which the boundary is to be drawn, yet that, in the course of his reasoning upon this point, he has decided several questions, being seven in number, connected with it, upon which the two parties had entertained different opinions.

Sir Charles R. Vaughan further states that it is the opinion of his Majesty's Government that the decisions of the arbiter upon the second and third main points referred, and also upon the subordinate questions as to which he expresses an opinion in his reasoning upon the first main point, ought to be acquiesced in by the two Governments; and that, in any future attempt to trace a boundary in strict conformity with the words of the treaty of 1783, it would be necessary to adopt the opinion expressed on these seven questions, as a ground-work for further proceedings.

Without here attempting a more particular reference to other remarks of Sir Charles R. Vaughan, the undersigned will proceed with his observations in reply; not doubting that in these a satisfactory answer to the entire scope of Sir Charles R. Vaughan's note will be perceived.

The undersigned is constrained to express his regret that it should still be considered by his Majesty's Government that any part of the opinion of the arbiter is obligatory upon either party; but he does not deem it necessary or useful, at present, to enter at large into the discussion of that point. From the nature of the opinions expressed by the arbiter, his recommendations could not have been carried into effect by the President without the concurrence of the Senate; and that body, considering those opinions not only as not determining the great and substantial object of the reference, but as in fact deciding that object to be impracticable, and therefore recommending to the two parties a boundary not even contemplated either by the treaty or by the reference, nor within the power of the General Government to take, declined advising the President to execute the measures recommended by the arbiter, but, on the contrary, did advise him to open a new negotiation with his Britannic Majesty's Government for the ascertainment of the boundary between the possessions of the United States and those of the King of Great Britain, on the Northeastern frontier of the United States, according to the treaty of 1783.

The proposition submitted by Mr. Livingston in his letter of the 30th April, proceeds upon this basis, in the hope that, if embraced, it will remove the principal difficulty which prevented the arbiter from attaining the object of the reference.

The undersigned is constrained to observe, however, that he cannot admit that even a decision, much less the expression of an opinion, by the arbiter, upon some of the disputed points, but of a character not to settle the real controversy, is binding upon either party in any future attempt to adjust that which the arbiter failed to settle.

Now, the main object of the stipulation in the fifth article of the treaty of Ghent, of the commission raised under that article, and of the reference to the King of the Netherlands, was the ascertainment of the Northeastern boundary along its entire line, according to the treaty of 1783, and which had remained unascertained since that period. It is true that in the ascertainment of this boundary many points, as is most generally

the case in disputed questions of location, were involved, and that each of those may be admitted to be necessary to the discovery of the true boundary throughout the whole line; but when the arbiter felt himself unable to decide more than one, or at most two, of these points, he was in fact little nearer the accomplishment of the great and real object of the reference, or of the objects of the treaty of 1783, and that of Ghent, than if he had left each point undetermined. The most material point, in the line of the true boundary, both as it respects the difficulty of the subject, and the extent of the territory and dominions of the respective Governments, he confessedly not only failed to decide, but acknowledged his inability to decide, thereby imposing upon both Governments, and especially that of the United States, owing to the peculiar structure of its institutions, the unavoidable necessity of resorting to further negotiation and other means to ascertain the real boundary of the treaty of 1783; and, as a necessary consequence, each party was absolved from any obligation to adopt his recommendations.

Not only has the arbiter not decided all the points necessary to be ascertained for the purpose of establishing the true boundary of the treaty of 1783, but the vital and most material point, that without which no step can be taken in fixing the boundary and running the line stipulated by the treaty of 1783, he has undeniably left undecided, whereby the great objects, both of the treaties and of the convention of reference, have been defeated.

Nor can the undersigned admit that, of the three main points of difference referred to the arbiter as necessary to ascertain the boundary of the treaty of 1783, he has decided two, as is supposed by his Majesty's Government. On the first point it is not contended that the arbiter made a decision, or that he found either the angle or the highlands called for by the treaty of 1783; but it is on the contrary clear that, so far from deciding that point, or finding those places, he merely expressed an opinion of what would be suitable for the parties to adopt, in lieu of the line of the treaty; and it appears to the undersigned equally clear, that in relation to the third point, his opinion is expressed in no more positive language, and with no nearer an approach to a decision. On this point he expresses an opinion merely, that it will be suitable to proceed to fresh operations to measure the observed latitude, but in such manner that the fort at Rouse's point shall be included in the territory of the United States.

The undersigned is aware, however, that, if the proposition made by Mr. Livingston should be accorded to by his Majesty's Government, and the commission hereafter to be appointed should result, as the undersigned believes it will, in ascertaining the true situation of the boundary called for by the treaty of 1783, that it would be afterwards necessary, in order to ascertain the true line of boundary, to settle the other two points, according to which it is to be traced. And as the proposition contained in Mr. Livingston's letter does not apply to either of these points, the President is sensible that some understanding upon them will be proper to the attainment of the great object he is framing.

The President has, therefore, directed the undersigned to say that, if the proposition he has caused to be made be accorded to by his Majesty's Government, notwithstanding that he does not admit the obligatory

effect of the decision or rather the opinion of the arbiter on the point, he is willing to take the stream situated farthest to the northwest among those which fall into the northernmost of the three lakes, the last of which bears the name of Connecticut lake, as the northwesternmost head of the Connecticut river, according to the treaty of 1783.

As it respects the third point referred to the arbiter, but upon which he failed to decide, Sir Charles R. Vaughan is doubtless aware that, as early as the year 1771 and 1772, the line of boundary involved in it was surveyed and marked along the 45th parallel of north latitude, from the east side of Lake Champlain to the river Connecticut, by Thomas Valentine, deputy surveyor on the part of the province of New York, and by John Collins, deputy surveyor of the province of Quebec; that since that period grants of land have been made by the respective Governments on both sides up to this line; that settlements have been formed, that towns have risen up, and that jurisdiction has been exercised by the two Governments up to this line, on either side. These facts are certainly cogent proofs that this line is the true boundary according to the treaty of 1783, and it appears to the President that, regarding the preservation of the population on both sides, their habits, and settlements, this third point might be disposed of with mutual satisfaction to both nations, and in strict conformity with the treaty of 1783, by adopting the line as surveyed and marked by Thomas Valentine and John Collins, in 1771 and 1772; and he will accordingly agree, if his proposition as to the first point be embraced, to adopt this line.

An acquiescence by the United States in the opinions which it is supposed by his Majesty's Government have been pronounced by the arbiter in the course of his reasoning upon the first point submitted to him, is liable not only to the objections already stated, but to others, which the undersigned is constrained by the spirit of frankness in which the proposition directed by the President has been presented, to inform Sir Charles R. Vaughan are insuperable.

It is in the first place to be observed that the matters to which the arbiter's opinions, mentioned by Sir Charles R. Vaughan, relate, although subjects on which the two parties may have entertained different views, were subordinate, merely, to the point in dispute submitted to the arbiter; and were used by the parties in illustration of their pretensions, and as affording grounds to sustain their respective positions on the real point in dispute. The views expressed by the arbiter on these matters cannot be regarded as decisions within the meaning of the reference, but rather as postulates or premises, by which, in the course of his reasoning, he arrived at the opinion expressed in regard to the point submitted for his decision: and it therefore follows, that the acquiescence on the part of the United States as required by Great Britain would be to reject as erroneous the conclusion of the arbiter, and at the same time adopt the premises and reasoning by which he reached it.

It must also be remarked, that these seven postulates or premises selected by his Majesty's Government as necessary to be considered by the United States, are but part of those on which the arbiter, in the course of his reasoning, was equally explicit in the expression of his views, and that on others, his reasoning may be considered as being more favorable to the pretensions of the United States; and no reason is preceived, there-

fore, why an acquiescence in the opinions of the arbiter upon these should not equally apply to all the premises by him assumed, and be binding upon both Governments.

The undersigned is persuaded, however, that there is no obligation upon either party to acquiesce in the opinion of the arbiter on any of the matters involved in his premises, and that to do so, would defeat the end of the present negotiation.

It appears to be conceded that, upon this first and most material point, the arbiter has not made his decision in such manner as to be binding upon either of the parties, and if, in consequence of this fact, no obligation can arise to acquiesce in his opinion upon the main point he was called upon to decide, certainly there can be no greater obligation to yield, not to his decisions, but to his opinions, upon matters subordinate merely.

The stipulations in the treaty of Ghent require the ascertainment and determination of those parts of the boundary designated in the treaty of peace of 1783, therein mentioned; and the three points of difference between the commissioners appointed according to the former treaty, were referred to the decision of the arbiter: of these the most material point is that of the highlands, to which the proposition directed by the President applies, and which are designated in the treaty of peace as the northwest angle of Nova Scotia, formed by a line drawn due north from the source of the St. Croix river to the highlands, dividing the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean.

Now should it be even admitted that, in relation to some of the matters subordinate to this material point submitted to him, the arbiter may have expressed his opinions, yet it is obvious that the result of his reasoning and of those opinions upon his premises taken together, instead of leading to the determination he was called upon to make, necessarily conducted him to the conclusion that neither of the boundaries claimed by the respective parties is the true line, and that he himself could not ascertain and determine which the true line, according to the treaty, is. His premises and reasoning, therefore, ended in satisfying the judgment of the arbiter that it was impossible for him to decide the great point submitted to him; but, instead of reviewing his course of reasoning, which, for the cause already stated, there was good ground to distrust, and, in the opinion of the undersigned, wholly to reject, inasmuch as to admit its accuracy would be subversive of the objects and stipulations both of the treaty of 1783 and of that of Ghent; and instead of proceeding by other means to ascertain and determine the true line, he recommended a new line, confessedly different from that called for by the treaty of 1783, answering in no particular the words of that treaty, and which could only be established by a convention between the two Governments.

But this recommendation the Government of the United States could not adopt, nor, without the consent of the State of Maine, agree upon a new and conventional line different from that required by the treaty of peace. The resolution of the Senate pursuant to which the present negotiation has happily been renewed, proposes to ascertain the boundary according to the treaty of 1783; and for this purpose, by whatever means it may be ascertained, the authority of the Government of the United States is complete without the co-operation of the State of Maine.

Now, it must be admitted that the arbiter precluded himself from attaining this object by his reasoning on the subordinate matters already mentioned, and by failing afterwards to adopt other means not only allowable but usual in such cases.

In all questions of boundaries of tracts and countries designated by natural objects, the plain and universal rule of surveying is, first, to find the natural object, and then to reach it by the nearest direct course from any given point, and with the least possible departure from the particular course called for in the original deed or treaty. The obstacles by which the commissioners, in the first instance, and the arbiter, afterwards, were prevented from ascertaining the boundary upon the first point of difference, was the supposed impossibility of finding such highlands, answering the description of the treaty of 1783, as could be reached by a line drawn due north from the monument; whereas, had either first found the highlands called for by the treaty, and afterwards, in conformity with the rule already adverted to, traced the line from the monument to such highlands, in the manner above indicated, it is believed the true line of the treaty could have been ascertained. Here then is one plain and usual means by which this difficult question may be settled, but which has not yet been resorted to in the previous efforts of the party to adjust it.

This means the proposition submitted by the President proposes to employ, and in the manner particularly referred to in the letters which have been heretofore addressed by the Secretary of State to Sir Charles R. Vaughan.

Now, the proposition of the President is, to find the highlands answering the description of those called for by the treaty of 1783, and to them from the monument to run a direct line; and the President does not doubt that, with the aid of more accurate surveys, by skilful persons on the ground, and freed from the restraint hitherto imposed by a due north line, such highlands may be found; and which either the commissioners or the arbiter might have found had they adopted the rule now proposed.

But the British Government asks the United States, as a preliminary concession, to acquiesce in the opinion of the arbiter upon certain subordinate facts, being seven in number, by which, obviously, he was prevented from finding that which it is the object of the President now to discover.

The undersigned is persuaded that Sir Charles R. Vaughan will admit that the concession of these opinions would, in effect, defeat the sole object, not only of the proposition, but of the negotiation at present renewed, i. e. the ascertainment and determination of the boundary according to the treaty of 1783.

By the opinion of the arbiter in relation to these subordinate matters, he reached the conclusion that the discovery of the line of 1783 was impracticable, and that the question could only be settled by a conventional line; and, therefore, the acquiescence of the United States in the same opinions, would, *in limine*, confine the negotiation to a conventional line, to which, in the present state of the controversy, they have no authority to agree.

To insist upon such concession would not merely defeat the object of the negotiation, but would be an unnecessary departure from the terms and stipulations of previous treaties.

The clear object of the treaty of Ghent is to ascertain the boundary designated by the treaty of 1783, and that object it should be the mutual desire of the two Governments to accomplish, by all the means at their command. Although the efforts already made for that purpose have proved unsuccessful, neither party should be deterred, seeing how deeply the subject affects their amicable relations, from resorting to others more promising in their nature, but which on previous occasions have been overlooked.

If, after a resort to the plain and universal rule now recommended, it should be found impracticable to trace the boundary according to the treaty of 1783, it would be time enough, and might then be desirable to enter upon a negotiation for terminating the difficulty by the adoption of a conventional line satisfactory to both parties.

This mode, however, could only be adopted with the special assent of the State of Maine; and it is believed that the probability of such assent, in the present state of the negotiation, while, on the part of the authorities of that State, no doubt is entertained of the practicability of ascertaining the true line, and while so much confidence is felt in the means now proposed, is too remote to justify any attempt to procure it.

It would also be impossible to reconcile the people of that State to the result of any negotiation in which should be at once conceded those points, respecting which, in the course of his reasoning, it is supposed the arbiter committed the most serious error, and by which he was prevented from coming to a decision by which both parties would have been bound.

The proposition directed by the President, therefore, is, to submit the whole subject, so far as it relates to this first point of difference, to the commission mentioned in the letter of Mr. Livingston of 30th April, and clothed with the same powers as belonged to the commissioners under the treaty of Ghent and to the arbiter, in order that, instructed by the introduction of the rule now explained, and not adopted by their predecessors, they may have greater means for a satisfactory discharge of their duties.

For a successful termination of the labors of the commission to be instituted under this proposition, an unlimited discretion over all the points necessary to a proper decision of the subject committed to it is indispensably necessary; and it must be obvious that, if the new commissioners should be restricted to the reasoning of the arbiter, either in its premises or conclusions, the only object of their appointment would necessarily be defeated.

The undersigned believes that, in the foregoing observations, it will be found that a sufficient answer has already been given to the suggestion of Sir Charles R. Vaughan that the objection to the power of the Government of the United States to adopt the line recommended by the King of the Netherlands will be equally fatal to that suggested by Mr. Livingston. It may not be improper, however, further to observe, that the objection arises from the want of authority in the General Government to adopt a line confessedly different from that called for by the treaty of 1783; but their authority to ascertain that line being unquestionable, their power to employ all the legal and usual means for its ascertainment is equally clear. It is with this view that the proposition presented by the Presi-

dent proposes to conform the course to the natural object, whereby the true line of the treaty would be legitimately ascertained.

On the whole, the undersigned persuades himself that his Majesty's Government will be disposed to co-operate with the President in another effort for the adjustment of this important subject; and not be deterred from embracing the means now proposed, from an apprehension of difficulties which it is confidently believed are not likely to occur.

The undersigned avails himself of the occasion to renew to Sir Charles R. Vaughan the assurance of his distinguished consideration.

LOUIS McLANE.

Sir Charles R. Vaughan to Mr. McLane.

WASHINGTON, March 16, 1834.

The undersigned has the honor to inform Mr. McLane that he has transmitted to his Majesty's Government a copy of the note received from him, dated the 11th instant, in answer to the proposal made by the British Government to the Government of the United States, that both parties should agree to acquiesce in certain points decided by the arbiter, which might facilitate the settlement of the Northeastern boundary of the United States.

The undersigned begs permission to call the attention of the Secretary of State of the United States to some observations which he wishes to make upon the objections which are said to be insuperable, on the part of the United States, to an acquiescence in the points which he has had the honor, according to his instructions, to submit to the American Government.

The adoption of the views of the British Government by the Government of the United States, was meant to be the groundwork of future proceedings; whether those proceedings were to be directed to another attempt to trace the boundary by a fresh survey of the country, as proposed by the United States, or to a division of the territory depending upon a conventional line.

The undersigned finds that, in the note of Mr. McLane, there is a positive objection, on the part of the United States, to consider any point of the controversy, as decided by the arbiter, to be binding upon the American Government; that to agree in the seven points enumerated by the British Government, would be to acquiesce in the premises by which the arbiter has arrived at a conclusion already rejected by the Senate.

The arbitration of the King of the Netherlands was invited and accepted in the following general terms: "That his Majesty would be pleased to take upon himself the arbitration of the differences between the two countries." The opinion of the arbiter was asked in the statements of the respective parties, not upon a question involving the whole continuous line of boundary, but upon three separate and distinct points, which were specified. The first of these main points could not be entirely decided by the arbiter, but he decided seven subordinate points growing out of it, in which the United States have been asked to acquiesce, as preliminary to any further proceedings.

The undersigned has already had the honor to state, in a former note, that the British Government does not conceive that the decision of the arbiter is invalidated, and ought to be set aside entirely, because it has failed to decide one of the three distinct points submitted to him.

Mr. McLane does not admit that the arbiter has decided, as the British Government asserts, two out of the three main points submitted for his decision. In the opinion of the undersigned he has clearly decided what ought to be considered as the northwesternmost head of the Connecticut river; but, according to Mr. McLane's note, the Government of the United States will only admit it conditionally.

With regard to the third separate and distinct point submitted by the respective parties, the tracing the boundary line along the 45th degree of latitude, in the American statement, "the question referred is, whether, under the treaties of 1783 and of Ghent, the old line may be continued to be considered as the boundary of the United States, or whether this shall be surveyed anew, in conformity with the late observations of latitude."

The arbiter decided strictly according to the terms in which the question was put to him in the American statement: that it would be right to proceed to fresh operations to measure the observed latitude.

This decision was accompanied with a recommendation that Rouse's point, to which the United States had abandoned all claim, should be restored to them. The undersigned has had the honor to declare the willingness of the British Government to grant that cession, as a part of the preliminary points to be agreed upon by both parties before they proceed to further negotiation.

Without any consideration of the cession of this point by his Majesty's Government, Mr. McLane proposes to dispose of this third point, (the line of boundary on the 45th degree of latitude,) by both parties agreeing to adopt the old line surveyed by Valentine and Collins previously to 1774. It appears, on a reference to the statement delivered to the King of the Netherlands, that both parties suspected the survey of Valentine and Collins of great inaccuracy, and the only motive for retaining it can be, that some American citizens may have made settlements upon some nine miles of territory which a new survey might throw into the possession of Great Britain.

The undersigned cannot agree with Mr. McLane that the acquiescence of the United States in the seven subordinate points lately submitted by his Majesty's Government, would confine the negotiation "*in limine*" to a conventional line, to which the President has no authority to agree; and, notwithstanding the unlimited discretion which the Secretary of State proposes to give to the commissioners to be appointed according to Mr. Livingston's proposal, not a step can they take unless the two Governments agree upon two of the seven subordinate points which the undersigned has enumerated in a former note—the character of the land they are to discover as dividing waters according to the treaty of 1783, and what are to be considered as Atlantic rivers.

Whatever may be the reluctance of the United States to consider the decision of the arbiter upon any separate point, as binding upon either party, because he failed to discover the line of boundary so defectively described in the treaty, yet we cannot but agree that in all points de-

cided, we have (in the language of the report of the Senate) the impartial opinion of a disinterested judge selected by both parties to settle a question of great perplexity.

In answer to the observation of Mr. McLane that, on many points the reasoning of the arbiter has been more favorable to the United States than to Great Britain, and that, therefore, acquiescence should equally apply to all the premises assumed, the undersigned has only to require that they should be stated, as he is confident that, if acquiescence in them can facilitate, in any shape, the object which now occupies both Governments, (the devising means of settling the boundary,) they will meet with the most favored consideration.

From a review of the correspondence which the undersigned has had the honor to carry on with the Secretary of State, it results that there is a decided determination, on the part of the Government of the United States, not to abandon the task which seems to be hopeless to the British Government, of tracing the boundary according to the defective description of it in the treaty of 1783.

By the 7th article of the convention of arbitration it was agreed "that the decision of the arbiter, when given, shall be taken as final and conclusive, and it shall be carried, without reserve, into immediate effect, by commissioners appointed for that purpose by the contracting parties."

Great Britain, in fulfilment of the obligations contracted under that article of the convention, announced to the United States her willingness to abide by the award of the arbiter.

It is not for the undersigned to decide how far the British Government was entitled to insist upon the question of boundary having been finally settled by the decision of the King of the Netherlands. The Senate of the United States, according to the statement of the proceedings given in the 8th volume of Congressional Debates, decided, by a majority of only one vote, the numbers being 21 to 20, to decline to adopt the boundary recommended by the King of the Netherlands, and by a similar majority, the numbers being 23 to 22, the Senate decided to advise the President to open a new negotiation with his Britannic Majesty.

When the undersigned finds so important a measure defeated by a bare majority; when a majority of one only decided the Senate to advise the opening of a new negotiation; when that negotiation was restricted to one inadmissible basis, and accompanied with new pretensions, which the British Government could not consent to entertain in connexion with the boundary question; when the plan proposed by the United States for another attempt to trace the boundary of the treaty is so complicated; and when the points proposed by the British Government are rejected which were to render that plan more practicable, it is a subject of sincere regret that the award of the arbiter was set aside, which, by conferring upon the United States three-fifths of the disputed territory, together with Rouse's point, made a much greater concession than is ever likely to be obtained by a prolonged negotiation. But it is alleged that an insuperable constitutional difficulty occasioned the rejection of the award, and, therefore, Great Britain is under the necessity of ascertaining, previously to any further proceedings, how far the General Government has the power to carry into effect any arrangement which may be the result of a renewed negotiation. The answer of Mr. McLane upon that point

is confined to stating that, should a new commission of survey, freed from the restriction of following the due north line of the treaty, find, any where westward of that line, highlands separating rivers, according to the treaty of 1783, a line drawn to them from the monument at the source of the St. Croix river will be such a fulfilment of the terms of that treaty as the President can agree to make it the boundary, without reference to the State of Maine.

The undersigned trusts that Mr. McLane will receive the observations which he has thought it his duty to make upon his note of 11th March, in the same spirit of conciliation which has marked hitherto the correspondence between the two Governments on the question of boundary.

The undersigned has the honor to renew to Mr. McLane the assurance of his most distinguished consideration.

CHAS. R. VAUGHAN.

Hon. LOUIS McLANE, &c.

Mr. McLane to Sir Charles R. Vaughan.

DEPARTMENT OF STATE,

Washington, March 21, 1834.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Sir Charles R. Vaughan, envoy extraordinary and minister plenipotentiary of his Britannic Majesty, of the 16th instant, in answer to that of the undersigned of the 11th instant, relative to the proposition submitted by direction of the President for the adjustment of the Northeastern boundary; and the undersigned has also to express his regret that the subject has not presented itself to Sir Charles in the light in which he had entertained the hope it would be viewed.

As Sir Charles R. Vaughan has transmitted for the consideration of his Government the note of the undersigned, no necessity is perceived for any other observations at present upon the remarks of Sir Charles, than such as may be proper to correct some misapprehensions into which Sir Charles appears to have fallen, as well in regard to the proceedings in the Senate of the United States, as to the character of the proposition submitted by the President; which apprehensions, should they also be entertained by his Majesty's Government, might have an injurious influence on its deliberations upon a subject so important to the amicable relations between the two Governments.

The undersigned is the more encouraged to make this reply, by the persuasion that, from the spirit in which Sir Charles R. Vaughan has made his observations, he will be ready promptly to correct any error into which, by not sufficiently adverting to the peculiar structure of the institutions of the United States, he may unintentionally have been led.

Although Sir Charles R. Vaughan is correct in his statement, numerically, of the votes in the Senate, in the two instances which he has specified, he has not adverted to other instances, in the course of the same proceedings, of a far more important and pertinent bearing; and of those which he has specified, he has entirely misconceived their bearing and

constitutional effect ; hence, he is especially mistaken in inferring, and indeed stating " that so important a measure was defeated by a bare majority, when a majority of one only decided the Senate to advise the opening of a new negotiation." This inference of Sir Charles arises from his statement " that the Senate of the United States decided by a majority of only one vote, the numbers being 21 to 20, to decline to adopt the boundary recommended by the King of the Netherlands ; and by a similar majority, the numbers being 23 to 22, the Senate decided to advise the President to open a new negotiation with his Britannic Majesty."

Now, the misapprehension into which Sir Charles has fallen is twofold : 1st, in not properly considering the constitutional action of the Senate over such subjects, and in supposing that in any vote of that body, any number of its members within not one or two, but even twenty-three of a majority, were in favor of adopting the award ; and, 2d, in considering the vote of the Senate upon a question wholly distinct and separate in all respects, as indicative of the opinion of the Senate in regard to the effect of the award.

The undersigned has already informed Sir Charles R. Vaughan " that, from the nature of the opinions expressed by the arbiter, his recommendations could not have been carried into effect by the President, without the consent of the Senate ;" and it is proper now to observe, that such consent can only be constitutionally given " provided two-thirds of the Senators present concur." Now, in the first instance which Sir Charles has specified, the number of Senators present was 41, of which number two-thirds could not be less than 28 ; and, therefore, if Sir Charles were correct in supposing the vote in this instance as applying to the validity of the award, and the twenty Senators voting in the negative upon that occasion to be favorable to its adoption, still the number would be short, not one only, but eight of the constitutional number of two-thirds.

It is obvious, however, from the proceedings to which Sir Charles has referred, that the vote in this instance had no direct application to the validity of the award and affords no proper indication of the opinion of the minority of twenty upon that point. The President could not execute the award without the consent of the Senate, two-thirds of the members present concurring ; but this consent must be positively declared, and a failure or omission so to declare it is tantamount to a rejection. A proposition inviting or requiring such assent is also of an affirmative character, and the sense or action of the Senate in regard to it ought regularly to be affirmatively manifested. Now, the committee to whom the President's message was referred, and to whose report Sir Charles has alluded, expressed the opinion that, in this case, the United States are not bound by the award, as such, though on grounds of expediency a majority of the committee was favorable to its adoption ; and, therefore, they recommend a positive and affirmative resolution that the Senate advise the President to express to his Majesty the King of the Netherlands the assent of the United States to the determination made by him, and consent to the execution of the same. This resolution presented the usual and only proper mode of ascertaining constitutionally whether the Senate would consent to the execution of the award ; and, upon a motion to strike out that part of the resolution expressive of the consent of the Senate, the vote stood 35 to 8—eight only concurring in consenting to

the execution of the award. Of these eight, it is certain that three were of the same majority of the committee whose report has been adverted to, who pronounced the award not binding upon the United States; and whether the remaining five supported the resolution from a belief that the award was binding, or concurred with the majority of the committee in their views of expediency merely, it is impossible to say, and it is not material to inquire. It may, therefore, be safely affirmed that, in this vote is to be found the fact that, of the forty-three members of the Senate present, eight only would consent to the execution of the award by the President; and from the further proceedings of the Senate, alluded to by Sir Charles, nothing more is to be inferred than advice upon the part of certain members to assign the ground for their refusal to concur, and which might not have operated with others. These positions derive conclusive confirmation from the vote of the Senate in a subsequent part of their proceedings upon the amendment offered by a Senator from Kentucky to a resolution submitted by a Senator from Maine; the latter resolving that the Senate do *not* advise a submission to the opinion of the arbiter; and the amendment proposing to insert, in lieu thereof, an affirmative resolution, "that, in the opinion of the Senate, good faith and sound policy require the execution of the award." Of the forty-two members of the Senate then present, eight only supported the amendment, and thirty-four opposed it; whereby the negative proposition of the Senator from Maine, in itself unusual, became more obviously unnecessary, and was for that reason, as it may be presumed, withdrawn.

Now, does not Sir Charles perceive, from the result of all these proceedings, that the Senate not only failed, but, by two repeated votes of 35 and 34 to 8, refused to consent to the execution of the award, and by necessary implication, denied its binding effect upon the United States?

The effect, then, of this refusal of the Senate to consent to the execution of the award, put it out of the power of the President to execute it; and the further effect, as stated in the letter of Mr. Livingston of the 30th April, 1833, was to leave the high parties to the submission precisely in the situation in which they were prior to the selection of the arbiter.

In this posture of the affair, so far as it regards the award, no further action by the Senate could be expected or hoped for; and so far as regards the preliminary steps in any future negotiation for the adjustment of this important subject, was not required. The high duty was therefore once more devolved upon the President of exerting his executive power under the constitution to select a new arbiter, or to devise other means more practicable in their nature, and more likely to obtain the objects of both the high parties. The first was deemed altogether useless, from the position assumed by the Government of his Britannic Majesty, as stated in Mr. Livingston's letter already alluded to; and, therefore, it only remained for the President to resort to other means, less objectionable, to obtain the objects of the treaty of Ghent, which required the ascertainment of the line of boundary of the treaty of 1783. It has been already observed that the authority of the President for this purpose, existed in virtue of his executive power under the constitution, and independently of the preliminary action of the Senate; but neither the President nor the Senate, nor both united, had authority, without the assent of the State of Maine, to agree upon a new and conventional line.

Now, it is clear that, in the second instance of the vote in the Senate, to which Sir Charles R. Vaughan has referred, the advice given by that body had no relation whatever to the opinion of the arbiter; but, on the contrary, as the Senate had previously refused to concur in consenting to the adoption of the award, suggested only that course which, in the opinion of the majority, it would be expedient for the President, under the circumstances, to pursue. And if it were proper (which, in the opinion of the undersigned, it is not) to enter into any speculation of the reasons by which the minority of twenty-two, on that occasion, were influenced in refusing to give any advice to the President, they might well be supposed to arise either from such advice being unnecessary, or, perhaps, a disposition with some to insist upon the strict pretensions upon the part of the United States, without further negotiation. But, however unnecessary such advice might be, it nevertheless manifested that, in the opinion of twenty-three members of the Senate, not only deserving, but—from the co-ordinate authority of that branch of the Executive power in any ultimate arrangement of the subject—commanding the highest respect, it was yet practicable to ascertain the line of boundary according to the treaty of 1783, and that it was advisable that the President should enter upon a new negotiation for that object. This resolution, therefore, did not defeat “so important a measure,” to wit, the adoption of the line recommended by the arbiter, which, as has been shown, was defeated before; though it may be admitted to have restricted, for the present at least, the general discretion of the President in his further efforts to arrange the difficulties, to a negotiation to fix the boundary according to the line of 1783. And it cannot be too often repeated, or too forcibly impressed upon the mind of Sir Charles R. Vaughan, and upon the consideration of his Government, that any attempt to procure the assent of the State of Maine to a new conventional line, after the proceedings of the Senate, and while, in the opinion of so large a portion of that body, the ascertainment of the line called for by the treaty of 1783 was practicable, would have been utterly hopeless.

It is, however, a consideration of even greater importance, in the present state of the discussion, that, as to the practicability of yet ascertaining the true line of the treaty of 1783, the opinion of the President concurred with that of a majority of the Senate.

The President has been at no time less sensible of the difficulties attending the settlement of this subject, than of the vital importance of its settlement to the future amity between the two nations; and he has never been unwilling to give every evidence of his solicitude, to the full extent of his constitutional authority. He duly appreciates the observation of the committee of the Senate alluded to by Sir Charles R. Vaughan, that it is a question of much perplexity and difficulty; and he has, therefore, always endeavored to bring his mind to the consideration of the subject with that firmness and fortitude, no less than with the most friendly disposition, necessary to overcome the difficulties with which it is beset. He perceived, however, that, in all the previous efforts between the two Governments to ascertain the boundary according to the line of the treaty of 1783, and in the deliberations of the arbiter, a natural and uniform rule in the settlement of disputed questions of location had been altogether overlooked, and he perceived no reason to suppose that it had

been present to the minds of the respectable committee of the Senate in making their report. He could not fail to perceive that, in every past effort to ascertain the boundary of the treaty, the chief if not the only difficulty arose from a supposed necessity of finding highlands corresponding with the description required by the treaty, to which a line due north from the monument might be drawn; whereas it was plain that, if such highlands could be any where discovered, it would be a legal execution of the treaty to draw a line to them, from the monument, by the most direct route, without regard to the precise course given in the treaty. Not doubting that the adoption of this principle will remove the chief difficulty which has hitherto embarrassed the subject, it became his duty to urge its adoption upon the Government of his Britannic Majesty, as one and perhaps the best expedient which remains for ascertaining the line of 1783 to the mutual satisfaction of the parties.

The undersigned is unable to perceive, in the plan proposed, any thing so complicated as Sir Charles appears to suppose. On the contrary, next to its conformity with the uniform legitimate principles of surveying in such cases, it is chiefly recommended to the approbation and confidence of the President by its entire simplicity. In fact, the plan requires chiefly the mere discovery of the highlands called for by the treaty of 1783, which being ascertained, the mode of reaching them, upon the principle now suggested, is so simple, and is so clearly delineated in the diagram presented in the letter of Mr. Livingston of the 28th May, 1833, that no observations of the undersigned could make it plainer. It is presumed that it will not be contended that the difficulty of discovering such highlands is insuperable. The arbiter himself, with the lights before him, is not understood to have found it impracticable, at least to his own satisfaction, to find highlands answering the description of the highlands of the treaty; but his embarrassment arose from not being able to find them in a direction due north from the monument; and, certainly, it cannot be more difficult for commissioners on the spot, with the fullest means of personal observation, to arrive at a conclusion, as to the locality of the highlands, equally satisfactory to their own judgment.

It would appear from Sir Charles R. Vaughan's note now under consideration, that the undersigned's answer of the 11th instant, on the constitutional point, is not sufficiently explicit; being "confined," as Sir Charles supposes, "to stating that, should a new commission of survey, freed from the restriction of following the due north line of the treaty, find, anywhere westward of that line, highlands separating rivers, according to the treaty of 1783, a line drawn to them from the monument at the source of the St. Croix river will be such a fulfilment of the terms of that treaty as the President can agree to make it the boundary without reference to the State of Maine." The undersigned finds it difficult to be more explicit upon this point than he has been in his observations already made to Sir Charles R. Vaughan, and which, under the distinction presented in his note of the 11th instant, consist in the assurance that the Government of the United States have the constitutional authority to establish the line of 1783, which shall be designated as such by the commission contemplated in the proposition submitted under the direction of the President.

The want of authority in the Government of the United States, which

has been stated as a difficulty to the adoption of the line recommended by the arbiter, arises from the circumstance that that line is not only confessedly different from the original line called for by the treaty, but would deprive the State of Maine of a portion of territory to which, according to the line of 1783, she would be entitled. By the proposition of the President, however, a commission is to be raised, not to recommend or establish a new line different from the treaty of 1783, but to determine what the true and original boundary, according to that treaty, was, and in which of the two disagreeing parties the right to the disputed territory originally was. For this purpose, the authority of the original commissioners, if they could have agreed, was complete under the treaty of Ghent, and that of the new commission, now to be constituted, cannot be less.

It appears to the undersigned, from a view of the whole subject, that it imperiously becomes both Governments seriously to consider the present posture of the affair, and their future amicable relations, and, in proportion to the difficulties admitted to exist, to cultivate the disposition necessary to surmount them.

It is not contended that either of the high parties was bound to adopt the line of boundary recommended by the arbiter; and the Senate of the United States have refused, by a vote of great unanimity, to consent to its adoption by the President. It cannot with propriety be contended that the United States were under greater obligation to take the line recommended by the arbiter, when he himself could not be satisfied of the right of either party, than either Government would have been under to adopt either of the lines upon which the original commissioners disagreed.

Nothing remains, therefore, but to discard the line called for by the treaty of 1783, and adopt a new and conventional line, mutually convenient for both parties, or to make a further effort, by means yet untried, but affording reasonable hope of success, to discover the true line of the treaty of 1783.

To adopt the former alternative the United States have no power without the assent of Maine; and that assent, in the present state of the controversy, while there remains a reasonable hope of discovering the true and original boundary, it is not possible to obtain.

It is under such circumstances that the Government of his Britannic Majesty is invited to unite with the President in another effort, aided by the adoption of a plain and easy rule of surveying, to find the line of the treaty of 1783, and thus finally to remove the chief obstacle to that state of amity which it is so much the interest of both nations to cherish and perpetuate.

The undersigned avails himself of the occasion to renew to Sir Charles R. Vaughan the assurance of his distinguished consideration.

LOUIS McLANE.

Right Hon. Sir CHARLES R. VAUGHAN,

Envoy Extraordinary and Minister

Plenipotentiary of his Britannic Majesty.

Sir Charles R. Vaughan to Mr. McLane.

WASHINGTON, March 24, 1834.

The undersigned, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, has the honor to acknowledge the receipt of Mr. McLane's note of the 21st instant, and he feels himself called upon to offer some explanation of the misapprehension which it appears that he has entertained of the bearing of the several divisions in the Senate when the award of the King of the Netherlands was under their consideration.

The undersigned found, in the report which has been published of the proceedings in the Senate on that occasion, the question distinctly taken, and the award rejected by a bare majority of one vote. The division of 35 to 8, which Mr. McLane states was decisive upon the award, as it negatived the resolution in the report of the committee which recommended the acceptance, escaped the attention of the undersigned, in consequence of that question having been divided and encumbered with amendments. Subsequently a resolution similar to the one in the report of the committee, the undersigned now finds was rejected by a vote of 34 to 8. The inference drawn by Mr. McLane from these two divisions is, that only eight Senators were in favor of accepting the award, and it had been determined that two-thirds of the Senators present must concur in consenting to accept it, which could not, from the nature of the opinion expressed by the arbiter, be carried into effect by the President without the consent of the Senate.

Mr. McLane asserts that the division of 21 to 20, cited by the undersigned, had no direct application to the validity of the award, and afforded no indication of the opinion of the award of the 20 Senators who voted for its acceptance, and yet the vote was distinctly taken upon the question whether the Senate should advise the President to decline to adoption the boundary recommended by his Majesty the King of the Netherlands.

With regard to the observation of the undersigned that the mode in which it was proposed by the United States to settle the boundary was complicated, he did not mean to apply it to the adoption of a rule in the settlement of disputed questions of location, but to the manner in which it is proposed by the United States that the new commission of survey shall be selected and constituted.

The only alternative being, according to Mr. McLane's note, to decide upon a conventional line of boundary, or to make another attempt to find the line of the treaty of 1783; and the United States not having the power to adopt the former without the assent of Maine, the undersigned will seize the earliest opportunity of laying before his Majesty's Government the invitation of the President to make another effort to discover the line of the treaty.

The undersigned has the honor to renew to Mr. McLane the assurance of his most distinguished consideration.

CHAS. R. VAUGHAN.

The Hon. LOUIS McLANE, &c.

Sir Charles R. Vaughan to Mr. Forsyth.

WASHINGTON, December 8, 1834.

The undersigned, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, has received instructions from his Majesty's Government to lay before the Government of the United States the following observations, in reply to the proposition made by the President for settling the disputed boundary between his Majesty's North American possessions and the United States.

His Majesty's Government have considered, with all the attention which the great importance of the subject demands, the notes addressed to the undersigned on the 11th and 21st March, by Mr. McLane, the Secretary of State of the United States, and perceive with great satisfaction, in the language of Mr. McLane's notes, and in his earnestness in pressing upon his Majesty's Government a proposition believed by the President of the United States to be conducive to an adjustment of important differences between the two Governments, a new proof of the friendly sentiments of the Government of the United States towards that of his Majesty, and a fresh manifestation of a desire to confirm and perpetuate the amicable relations now so happily subsisting between the two countries.

Animated by a similar spirit of cordial friendship towards the President and Government of the United States, and actuated by an unabated and most anxious desire to arrive at a settlement of this question of boundary by any means not inconsistent with the honor and with the essential interests of Great Britain, his Majesty's Government, in replying to the notes of Mr. McLane, have determined to abstain from expressing all the regret which they feel, at finding that the American Government still declines to come to a separate understanding on those several points of difference, with respect to which the elements of decision are fully before both Governments. But his Majesty's Government cannot refrain from saying that they regret this circumstance the more, because, on the one hand, these points of difference are not beset with such difficulties as attend the ascertainment of the highlands described by the treaty of 1783; and because, on the other hand, the settlement of these points could not fail to facilitate the adjustment of the remaining points of difference, by narrowing the field of discussion, and by clearly establishing some of the data upon which a right determination of those remaining points of difference must depend. Passing by, however, for the present, these subjects of just regret, but without in any degree abandoning the argument contained in the note addressed by the undersigned to Mr. McLane on the 10th of February last, his Majesty's Government will now address themselves exclusively to that proposition of the President which is contained in Mr. McLane's notes, and in the previous communications of Mr. Livingston of the 30th April and 28th May, 1833; the proposition, namely, that new commissioners should be appointed, who should be empowered to seek, westward of the meridian of the source of the St. Croix, highlands answering to the description of those which are mentioned in the treaty of 1783.

The President founds this proposition on what Mr. McLane represents to be a plain and universal rule for surveying and laying down the bound-

aries of tracts and of countries designated by natural objects; this rule being, first to find the natural object, and then to reach that object by the nearest direct course from any other given point, and with the least possible departure from the particular course prescribed in the original deed or treaty in which the boundary is described. The President, it is said, does not doubt that, with the aid of more accurate surveys of the ground, by skilful persons, highlands answering to the definition of the treaty may yet be found; and he adds that, "should a new commission of survey, freed from the restriction of following the due north line of the treaty, find, any where westward of that line, highlands separating rivers according to the treaty of 1783, a line drawn to them from the monument at the source of the St. Croix river will be such fulfilment of the terms of that treaty as that the President can agree to make it the boundary, without a reference to the State of Maine."

His Majesty's Government think it right, with regard to this proposition, in the first place to say that, however just and reasonable the rule of surveying here stated by Mr. McLane may seem, they do not consider that rule to be so generally established and recognised as Mr. McLane assumes it to be. His Majesty's Government, indeed, do not recollect any case similar to the present in which the principle here asserted has been actually put in practice, but, on the contrary, they remember a case, not merely analogous to that which is now under discussion, but arising out of the same article of the same treaty of 1783, in which this supposed rule was inverted by the agents of the American Government itself. The treaty of 1783 declared that the line of boundary was to proceed from the Lake of the Woods, "in a due west course to the river Mississippi." It was afterwards ascertained, by actual survey, that even the sources of the Mississippi lie south of the latitude of the Lake of the Woods; and that, consequently, it would be impossible to reach the Mississippi by any line drawn due west from that lake. In order to escape from the difficulty thus encountered, it was urged by the American commissioners that the natural object, the Mississippi, should be wholly disregarded; and in the final settlement of that part of the boundary, as it was fixed by the second article of the convention of October 20, 1818, the principle now contended for by the American Government was reversed; for, instead of the natural object being made the primary, and the connecting line the secondary guide, the natural object, namely, the river Mississippi, was put out of consideration, and the connecting line, namely, the line to be drawn due west from the Lake of the Woods, was converted into a primary element of the boundary. It was demonstrated that such a line never could reach the Mississippi at all; but, instead of adhering to the source of the Mississippi, as one fixed point, and drawing a new connecting line to it from the Lake of the Woods, which was the other fixed point, the commissioners adhered to the arbitrary line to be drawn due west from the lake, and wholly abandoned the Mississippi, though that river was specifically mentioned in the treaty as a land-mark.

The undersigned has already observed, in his note of the 10th of February last, that the objection which has been made by the State of Maine to the line proposed by the King of the Netherlands would seem to be equally applicable to a westerly deviation from the due north line. But,

nevertheless, if the President of the United States is persuaded that, notwithstanding any opposition on the part of Maine, he can carry through, on this occasion, the practical application of the principle of surveying which he has proposed, and if, as Mr. McLane alleges, no hope remains of overcoming the constitutional difficulty in any other way, at least until this new proposition shall have been tried and found unavailing, his Majesty's Government are ready to forego their own doubts on this head, and to acquiesce in the proceeding proposed by the President of the United States, if that proceeding can be carried into effect in a manner not otherwise objectionable. But, in order to preclude all future uncertainty, or cavil, on matters upon which differences of opinion have arisen, and may arise again, his Majesty's Government would consider it desirable that the principles on which the new commissioners would have to conduct their survey, should be settled beforehand, by a special convention between the two Governments. There is, indeed, one preliminary question upon which it is obviously necessary that the two Governments should be agreed before the commissioners to be appointed could begin their survey with any chance of success; and that question is, What is the precise meaning to be attached to the words which are employed in the treaty to define the highlands which the commissioners are to seek for? A difference of opinion has heretofore existed between the two Governments with respect to that meaning; and unless the commissioners are agreed upon that point, it is obvious that they never can concur in determining whether any particular highlands which they may meet with in their survey are actually the highlands intended to be described in the treaty. Mr. McLane has correctly stated in his note of the 21st of March, that the highlands to be sought for must be *highlands separating rivers according to the treaty of 1783*; and, in conformity with the words of that treaty, they must be "highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean." As, therefore, the highlands intended by the treaty are to be distinguished from other highlands by the rivers which flow from them, and as those distinguishing rivers are to be known from other rivers by the situation of their mouths, it is obvious that the operations of the surveying commissioners can lead to no practical result, unless it be settled beforehand which are the rivers that fall into the St. Lawrence, and which are those that fall into the Atlantic ocean.

Now, with respect to the rivers which flow northward into the St. Lawrence, no difference of opinion has arisen between the two Governments. But, with respect to the rivers which flow southward into the Atlantic ocean, a difference of opinion has taken place.

The British Government contend that the treaty of 1783 established a distinction in this respect between the Atlantic ocean and the bay of Fundy; and that rivers falling into the bay of Fundy are not, for the purposes of the treaty, rivers falling into the Atlantic ocean.

The American Government, on the other hand, has maintained that, for the purposes of the treaty, the bay of Fundy is part of the Atlantic ocean, and that rivers falling into the bay may be considered to be rivers falling into the ocean.

His Majesty's Government do not deem it necessary to recapitulate in

this place the conclusive arguments by which it has been shown in the British statements which were laid before the arbiter, and which are now in the hands of the American Government, that the framers of the treaty of 1783, when they used in the second article the words "rivers which fall into the Atlantic ocean," could not possibly have meant to designate any rivers whose mouths were situate to the eastward of the river St. Croix, which falls into the bay of Fundy. It is thought sufficient on the present occasion to advert, in support of this construction of the words of the treaty, to the striking fact that, whilst the river St. Mary, which was to form the Southern boundary of the United States, is described in the second article of the treaty as falling into the Atlantic ocean, the river St. Croix, which was to form the Eastern boundary, not merely in the same article of the treaty, but in the very next member of the same sentence, is described as falling into the bay of Fundy, while a little further on in the same article, the Eastern line of boundary, where it terminates at the mouth of the river St. Croix, and the Southern line of boundary, where it terminates at the mouth of the river St. Mary, are described "as respectively touching the bay of Fundy and the Atlantic ocean." Can it be seriously maintained that, in a treaty for settling a question of such vast importance as a boundary between two contiguous states, a matter which, of all others, imperiously requires preciseness of expression, the terms "bay of Fundy" and "Atlantic ocean" should have been thus set, not once only, but twice in the same article, in pointed opposition to each other, and yet that no real distinction should have been intended to be drawn between them; but that the "bay of Fundy" and the "Atlantic ocean" should have been carelessly used as synonymous and convertible expressions? His Majesty's Government conceive that no reasonable doubt can be entertained that, where the St. Croix, the Eastern limit of the United States, is described as falling into the bay of Fundy, it is advisedly so described, in contradistinction to the other rivers which are mentioned in the same article as flowing into the Atlantic ocean. But, if the St. Croix, whose mouth is situate at the very entrance of the bay of Fundy, is not an Atlantic river in the meaning of the treaty, none of the rivers which discharge themselves to the eastward of the St. Croix, and higher up in the bay, can possibly be considered as such.

The view which has uniformly been taken of this question by his Majesty's Government has lately received additional confirmation by the terms of the award of the King of the Netherlands. The opinion expressed in that document, that the rivers St. John and Ristigouche are not Atlantic rivers according to the meaning of the treaty, although it may not be accepted by the Government of the United States, as carrying with it the authority of an award, is at least, to use the language of the report of the Senate of the United States, "the impartial opinion of a disinterested judge selected by both parties to settle a question of great perplexity."

Considering, then, the force of the arguments which have here been either stated or referred to, and adverting to the fact that those arguments have been confirmed by the opinion of an impartial authority, selected by the common consent of the two Governments, his Majesty's Government trust that the American cabinet will be prepared to agree

with that of his Majesty as to the construction to be put upon this passage of the treaty, and will concur in deciding that the Atlantic rivers which are to guide the commissioners in searching for the highlands described in the treaty, are those rivers which fall into the sea to the westward of the mouth of the river St. Croix.

The undersigned is instructed to represent to Mr. Forsyth that his Majesty's Government consider a clear agreement between the two Governments on this point to be an indisputable preliminary to the establishment of any new commission of survey. Till this point is decided no survey of commissioners can lead to any useful result. But the decision of this point turns upon the interpretation of the words of a treaty, and not upon the operations of surveyors; and his Majesty's Government having once submitted this point, in common with others, to the judgment of an impartial arbiter, by whose award they have declared themselves ready to abide, they cannot now consent to refer it to any other arbitration.

The undersigned has the honor to renew to Mr. Forsyth the assurance of his highest consideration.

CHARLES R. VAUGHAN.

The Hon. JOHN FORSYTH, &c.

Mr. Forsyth to Sir Charles R. Vaughan.

DEPARTMENT OF STATE,

Washington, April 28, 1835.

The observations of the 8th December, submitted under instructions from the British Government by Sir Charles R. Vaughan, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, on the proposition made by the United States for the settlement of the disputed boundary between the United States and his Britannic Majesty's North American possessions, have been laid before the President, and, by his directions, the undersigned, Secretary of State of the United States, has now the honor to reply.

The President reciprocates most fully the spirit of cordial friendship towards the Government of the United States and himself, by which Sir Charles R. Vaughan is pleased to assure the undersigned that his Majesty's Government is actuated, and sees with satisfaction the renewed assurances of its desire to arrive at a settlement of the question of boundary by any means not inconsistent with the honor and essential interests of Great Britain. The undersigned is instructed to repeat, on the part of the President, the expression of his determination to effectuate that object by all the means within his constitutional competency which are reconcileable to his views of what are justly due to the character and interests of the United States.

The President has derived a satisfaction proportionable to his deep sense of its importance, from the success which has attended the past efforts of the two Governments in removing existing and preventing the recurrence of new obstacles to the most liberal and friendly intercourse

between them ; and it would be a source of unalloyed pleasure to be able, during the short period which he may remain at the head of the Government, to bring to a conclusion, satisfactory to both parties, a controversy which has been justly described as the only matter of serious difficulty which is still in contestation between Great Britain and the United States.

The convention authorizing and regulating the reference of the points of difference to a friendly sovereign, and the selection of that sovereign, had been made before the President entered on the duties of his office ; but no time was lost in adopting and facilitating all the measures in which his agency could be properly employed to bring that reference to a speedy and satisfactory result. If the distinguished arbiter agreed upon had found himself able to come to a decision upon the subject satisfactory to his own judgment, the Government of the United States would not have hesitated for a moment, whatever might have been its opinion of the justice of such decision, to have united with his Majesty's Government in carrying it fully and immediately into effect. Unfortunately, this was beyond his power, and the respected arbiter was too sensible of what was due as well to his own high character as to the parties, to profess to have done what he found himself unable to accomplish. Believing, sincerely, (but as the President cannot but think erroneously,) that he could not discharge the functions of arbitrator, he, from unquestioned motives of friendly regard to the parties respectively, acted in the character of mediator.

That the acts or suggestions of the selected sovereign, in the character of mediator, were not binding upon the parties further than they should, subsequently, respectively agree to adopt them, was a point too clear to furnish grounds of dispute between the two Governments ; nor was it less clearly the duty of the President to submit the whole matter, as presented by the arbiter, to the Senate of the United States, for its constitutional advice and co-operation. Recommendations of the arbiter were rejected by a large majority of that body, and a resolution passed advising the President "to open a new negotiation with his Britannic Majesty's Government for the ascertainment of the boundary between the possessions of the United States and those of the King of Great Britain, on the Northeastern frontier of the United States, according to the treaty of peace of 1783."

The parties were thus placed, in respect to the disputed boundary, in the situation respectively occupied by them before the conclusion of the convention of the 24th December, 1814, in virtue of which the various measures that had been successively adopted to bring this controversy to a satisfactory termination were commenced, leaving the President with no other rightful authority for its adjustment than that of opening anew negotiations for the settlement of the question, according to the terms and upon the principles of the treaty of 1783.

The undersigned is specially instructed to assure Sir Charles R. Vaughan that the President duly appreciates the prompt suggestion made by him, as his Britannic Majesty's minister, that a negotiation should be opened for the establishment of a conventional boundary between the two countries, which, while it respected, as far as practicable, their existing pretensions, should secure the best interests of each.

Possessing full power over the subject, his Majesty's Government might very properly consult what was due to its uniform professions, and Sir Charles R. Vaughan may assure his Government that, if the President had like powers, he would have met the suggestion in as favorable a spirit as that by which it was prompted. His limited power has been heretofore stated; and the reasons why, under the peculiar structure of our political system, the Federal Government cannot alienate any portion of the territory of a State without its consent, have been given at large to Sir Charles R. Vaughan, as well as the reasons why, under existing circumstances, and while a hope remains of arriving at a settlement of the question as originally presented under the treaty, there is but little prospect that the State of Maine would agree to the establishment of a new line. Thus restricted in the exercise of his discretion, and embarrassed by the difficulties arising from the failure of anterior efforts, the President has, nevertheless, given his constant attention to the subject, in the hope of still being able to find some mode by which the protracted controversy may be terminated satisfactorily.

The submission of the whole subject, or any part of it, to a new arbitrator, promised too little to attract the favorable consideration of either party. The desired adjustment was, therefore, to be sought for in the application to the controverted question of some new principle not heretofore acted upon, and the consequent prosecution of investigations hitherto unattempted, because regarded as irrelevant and inapplicable. He thought, and with respectful deference to the apprehension of his Majesty's Government, he still thinks, that, with the hearty co-operation of his Majesty's Government, the object which is so desirable to all parties, a fair and equitable settlement of the boundary in dispute, according to the treaty of 1783, by a faithful prosecution of the plan which has been submitted, by his directions, to the consideration of his Majesty's Government, is attainable.

By the treaty of 1783 the boundary between the dominions of the two Governments was to be a line drawn from the source of the St. Croix directly north to the highlands which divide the rivers which fall into the Atlantic ocean from those which fall into the river St. Lawrence, (the point at which the due north line was to cut the highlands was also designated as the northwest angle of the province of Nova Scotia,) thence, along the said highlands, to the northwesternmost head of the Connecticut river.

The ascertainment of the true northwest angle of Nova Scotia, or the designation of the highlands referred to, has been the principal difficulty by which the settlement of the boundary has been so long retarded; and it was the supposed impracticability of satisfactorily accomplishing that ascertainment or designation which prevented the adjustment by the arbitrator. The United States have always contended that the point to which they have uniformly claimed, is upon certain highlands north of the river St. John, which answers, in every respect, the description given in the treaty, and is the true northwest angle of Nova Scotia; a claim which is not intended to be abandoned or weakened by any thing the President has authorized to be proposed or said upon the subject. If the highlands now referred to, do, in truth, answer this description, no doubt could be reasonably entertained of the justice of our claim, as there would

be a perfect concurrence in the course prescribed and the natural object designated by the treaty ; but, on the part of Great Britain, it has been strenuously contended that no highlands, answering the description in the treaty, could be found northward of the river St. John, upon a line running directly north ; and it has, therefore, been insisted that the due north line shall be deemed to terminate to the southward of that river, and at a place called Mars hill.

The President is advised that it is a rule in practical surveying which prevailed in this country before the Revolution, and has since been, and still is, considered obligatory, that when there is found in the location of the premises described in a deed, or any other instrument, a disagreement in the course of a given line, and the bearing of a natural object called for as its termination, the given course must be made to yield to the given object, and the line closed at the object, in a direction corresponding, as nearly as practicable, to the course prescribed, upon the principle that the natural object furnishes evidence of the true intention of the parties, which may be relied upon with more safety than the course, errors in which constantly occur from the imperfection of the instruments used, or the want of knowledge of those in whose hands they may have been placed. He has thought that this rule might be rightfully and properly applied to the matter now in controversy, and is willing to agree that if, upon a thorough examination, it shall appear to those appointed by the parties to make it, that his Majesty's Government is correct in its assumption that the highlands hitherto claimed by the United States as those designated by the treaty do not answer that description, but that those highlands are to be found to the west of the due north line, that the boundary line should be closed according to the established rule in practical surveying. Whether there are highlands to be found in a north-westerly course from the source of the St. Croix answering better to the description given in the treaty of 1783 than those heretofore claimed by the United States, and so clearly identified as to remove all reasonable doubt, remains to be ascertained. No inquiry into this fact, with a view to apply it to the respective and conflicting pretensions of the parties, has hitherto been made. It was under these circumstances, and with such impressions, that Mr. Livingston was authorized to propose to Sir Charles R. Vaughan, for the consideration of his Government, that a new commission should be appointed, consisting of an equal number of commissioners, with an umpire selected by some friendly sovereign from among the most skilful men in Europe, to decide on all points in which they might disagree ; or a commission entirely composed of scientific Europeans, selected by a friendly sovereign, to be attended in the survey and examination of the country by agents appointed by the parties. The adoption of this course would, it was urged, have the benefit of strict impartiality in the commissioners' local knowledge and high professional skill, which, though heretofore separately called into action, have never before been combined for the solution of the question.

In consequence of a wish expressed by Sir Charles R. Vaughan to be more fully advised of the views of the President upon the subject of this proposition, he was furnished with a diagram, by which the manner in which it was intended the line should be run, in the event highlands were discovered better answering the description of the treaty than those

claimed by the United States, was pointed out distinctly ; while, to relieve his Majesty's Government from all apprehension of a more extended claim of territory on our part, Mr. Livingston was authorized to disclaim, and did disclaim, all pretensions on the part of the United States to the territory east of the line which had been previously run directly north from the source of the St. Croix. Actuated by that sincere desire to effect in some proper way the settlement of the boundary in question, by which he had been governed, Mr. McLane was subsequently authorized by the President to propose to Sir Charles R. Vaughan, for the consideration of his Majesty's Government, that, if the proposition made by Mr. Livingston for the adjustment of one of the three points of difference was accepted, the United States would, on their part, consent to adopt the place designated by Great Britain as the northwesternmost head of Connecticut river ; and would, also, as to the remaining point, the line from Connecticut river to the St. Lawrence, adopt that which was run by Valentine and Collins, which, it was believed, would not be unacceptable to Great Britain.

The undersigned does not learn from the communication of Sir Charles R. Vaughan that the justice and reasonableness of the rule of practical surveying, offered as the basis of Mr. Livingston's proposition, is now disputed, although not considered by his Majesty's Government so generally established and recognised as was supposed by the predecessor of the undersigned.

If it should become material to do so, which is not, from the present aspect of the question, to be anticipated, the undersigned would find no difficulty either in fortifying the ground occupied by his Government in this regard, or in satisfying Sir Charles R. Vaughan that the instance of a supposed departure from the rule brought into notice by his Britannic Majesty's Government, is not at variance with the assertion of Mr. Livingston, repeated by Mr. McLane. For the present, therefore, he limits himself to this single remark—that the line of demarcation between the United States and the possessions of Great Britain referred to by Sir Charles R. Vaughan, was not established as the true boundary prescribed by the treaty of 1783, but was a conventional substitute for it of a parallel of latitude, the result of a new negotiation, controlled by other considerations than those which were to be drawn from that instrument only. Under these circumstances, it is with unfeigned regret the President learns the decision of his Majesty's Government not to agree to the proposition made in that spirit of accommodation by which the United States have throughout been influenced, without a precedent compliance on their part with inadmissible conditions. These conditions were first brought to the consideration of the Government of the United States by Sir Charles R. Vaughan's letter to Mr. McLane of the 10th February, 1834, in which it was stated that, as the arbiter, in the course of his reasoning on the main point, had expressed his opinion upon several subordinate questions having a direct bearing thereon, these opinions, regarded by his Majesty's Government as decisions, ought to be acquiesced in by the parties before any steps were taken to carry the President's proposition into effect. These opinions, as stated by Sir Charles R. Vaughan, were found to be seven in number, embracing substantially every suggestion of the difficulties the arbitrator had found and express-

ed in yielding his assent to the American location of the disputed line. Sir Charles R. Vaughan has already been put in possession of the President's views upon this proposal of his Majesty's Government. The President sincerely believes that the new process of investigation proposed by him, might, under the control of the principle of practical surveying developed, lead to a settlement of this agitating question, which, as it would be legally and fairly made according to a long-established and well-known rule, prevalent equally among the citizens of the United States and the subjects of his Britannic Majesty, ought to be, and he confidently trusted would be, satisfactory to all parties. Under this conviction, and being moreover most solicitous that no means by which so desirable an object might be facilitated, should be left untried, he consulted alike his inclination and his duty, by making the proposal in question. If his Majesty's Government are so firm in the belief that a satisfactory settlement of the disputed line of boundary, according to the treaty of 1783, is so clearly impracticable as to render all future efforts to to that end unavailing, and had, on that account, declined the offer made by the President, he might not have had cause to complain. But it appeared to him to be exceedingly unreasonable that he should be asked to adopt, in the prosecution of a proposed plan for the ascertainment of the true boundary as prescribed by the treaty, those suggestions and opinions of the arbiter, by which alone he had brought his mind to the extraordinary conclusion that the boundaries prescribed could not be located; more especially so, when the President sincerely dissented from the correctness of those opinions; and when, in addition thereto, the admission of some of them might, as understood by and following the previous pretensions of his Majesty's Government, establish as the true boundary of the treaty of 1783, the line claimed by Great Britain, yet declared by the arbiter himself, the adoption of whose opinions was thus asked, to be towards the United States unjust and inequitable, and not comporting with the obligations and intentions of the parties to that instrument. Sir Charles R. Vaughan was informed by Mr. McLane of the reasons upon which this opinion of the President was founded, and his Majesty's Government invoked not to persist in requiring conditions to which the President could not assent. The President is pleased to find that the frank and conciliatory spirit in which this was done has been duly appreciated by his Majesty's Government, and sincerely regrets that they were not also found to possess sufficient force and justice to induce it to withdraw entirely the objectionable conditions. Such, he is concerned to find, has not been the case; but that, on the contrary, while it has pleased his Majesty's Government to waive, for the present, six of the seven opinions referred to, the remaining one, among the most important of them all, is still insisted upon. The President does not think it necessary to direct any thing to be added to the reasons which have been urged by Mr. McLane in support of the objections of a general character to the course which his Majesty's Government think it justifiable to pursue in this respect, and the undersigned, therefore, only requests a careful reconsideration of them. In respect to the specific condition still persisted in—viz. that the St. John's and Ristigouche should be treated by the proposed commission as not being Atlantic rivers, according to the meaning of those terms in the treaty—the undersigned

submits a few brief remarks. Whether these rivers were or were not to be so regarded, was a point most laboriously argued between the two Governments, but without success, as far as it respected the opinions of either. Sir Charles R. Vaughan, in his communication to which this is a reply, has reasserted some of the positions of fact, and reinforced some of the reasons then asserted and urged by his Government; but the undersigned is not apprized of any thing new, either of fact or argument, that has now, for the first time, been brought forward. The inutility of renewing the discussion on this point is so obvious, that the undersigned deems it necessary merely to suggest that, however convincing and satisfactory the argument of the British Government to itself, it has been ever considered by the United States as altogether inconclusive, and the contrary position as most fully sustained by the arguments and facts heretofore adduced on their part in the discussion between the two Governments of the subject. That part of the communication of Sir Charles R. Vaughan, however, which seeks to strengthen the ground heretofore taken on this point by his Government, by calling to its aid the supposed confirmation by the arbiter, requires a more particular notice. In Sir Charles R. Vaughan's note of the 10th of February, 1834, the arbiter is represented to have declared that "rivers falling into the bay of Chaleur and the bay of Fundy, cannot be considered, according to the meaning of the treaty, as rivers falling into the Atlantic; and especially that the rivers St. John and Ristigouche cannot be looked upon as answering the latter description;" and, in Sir Charles R. Vaughan's last communication, the fact of such an opinion having been declared is taken for granted. Without stopping to question the effect of such a declaration upon the rights of the parties, as it has been rendered unnecessary by what has heretofore been said, the undersigned feels himself fully warranted in questioning that any such opinion has been given by the respected arbiter.

In regard to the first and most material point in controversy—where is the spot designated in the treaty as the northwest angle of Nova Scotia, and where the highlands dividing the rivers that empty themselves into the river St. Lawrence from those falling into the Atlantic ocean, along which highlands is to be drawn the line of boundary from that angle to the northwesternmost head of the Connecticut river?—the arbiter considered "that the nature of the difference, and the vague and not sufficiently determinate stipulations of the treaty of 1783, do not permit to adjudge either of the lines to one of the said parties without wounding the principles of law and equity with regard to the other." It is indeed true that, in support of this view of the subject, it was observed by the arbiter, "that if, in contradistinction to the rivers that empty themselves into the river St. Lawrence, it had been proper, agreeably to the language ordinarily used in geography, to comprehend the rivers falling into the bays Fundy and des Chaleurs with those emptying themselves directly into the Atlantic ocean; in the generical denomination of rivers falling into the Atlantic ocean, it would be hazardous to include into the species belonging to that class, the rivers St. John and Ristigouche, which the line claimed at the north of the river St. John divides immediately from rivers emptying themselves into the river St. Lawrence, not with other rivers falling into the Atlantic ocean, but alone; and thus to apply,

in interpreting the limitation established by the treaty, where each word must have a meaning, to two exclusively special cases, and where no mention is made of the genus, (*genre*,) a generical expression which would ascribe to them a broader meaning," &c.

It cannot but appear, from further reflection, to Sir Charles R. Vaughan, that this declaration, that the rivers St. John and Ristigouche could not be *alone* taken into view, without hazard, in determining the disputed boundary, is not the expression of an opinion that they should be altogether excluded in determining that question, or in other words, that the opinion of the arbitrator is, that the St. John and Ristigouche cannot be looked upon as rivers emptying into the Atlantic.

The undersigned has examined the award in vain to discover any other declaration of the arbiter, from which support could be derived for the assumption under consideration, and he finds nothing to sustain it in the general conclusions which the arbitrator allowed himself to reach. On the contrary, he insists that, independently of the strong inference to be drawn from the whole tenor of the award, that it was not his intention to express the opinion imputed to him. The arbiter has, in terms, protected himself, as well as the United States, against such an assumption, by the following explicit declaration, almost immediately succeeding that which can only be relied on to support the opposite conclusion: "*And on the other hand*, that it cannot be sufficiently explained how, if the high contracting parties intended, in 1783, to establish the boundary at the south of the river St. John, that river, to which the territory in dispute is, in a great measure, indebted for its distinctive character, has been neutralized and set aside."

Entertaining these views, the President has made it the duty of the undersigned to apprise Sir Charles R. Vaughan that he cannot agree to clog the submission with the condition proposed by his Majesty's Government. A thorough and most careful re-examination of the subject, in all its relations, has but served to confirm his previous impressions that a just regard for the rights of the parties, and a proper consideration of his own duty, required that the new submission, if made, should be made without restriction or qualification upon the discretion of the commissioners, other than such as result from established facts and the just interpretation of the treaty of 1783, and such as have been heretofore, and are hereby now again, tendered by him to his Britannic Majesty's Government. He despairs of obtaining a better constituted tribunal than the one proposed. He sees nothing unfit or improper in submitting the question as to the character in which the St. John's and Ristigouche are to be regarded, to the decision of impartial commissioners; the parties have heretofore thought it proper so to submit it, and it by no means follows that, because commissioners chosen by the parties themselves, without an umpire, have not been able to come to an agreement in respect to it, that the same unfortunate result would attend efforts of commissioners differently selected.

The President is not at present advised of any other proposition that it is in his power to make, in furtherance of that object, which is alone within his constitutional competency—the settlement of the boundary according to the treaty of 1783. The undersigned is, however, instructed to say that he will be most happy to receive any such proposition as his Britannic Majesty's Government may think it expedient to make, and

will not fail to consider it in a just and conciliatory spirit. He has also been authorized by the President to confer with Sir Charles R. Vaughan, whenever it may suit his convenience, and comport with the instructions of his Government, as well in respect to any suggestion which he may have to make upon the subject of the treaty boundary, as to any proposition his Majesty's Government may be disposed to offer for a conventional substitute for it. The undersigned deems it, however, required by frankness to say to Sir Charles R. Vaughan, that, as the President does not possess the power to establish a conventional boundary, without the assent of the State of Maine, it will be greatly conducive to the preservation of that harmony between the two countries both are so desirous to cherish, and which is so liable to be impaired by unavailing negotiation, that whatever proposition his Majesty's Government may feel disposed to make, should, before its submission to the authorities of that State, received a form sufficiently definite to enable the President to take their sense upon it without embarrassment, and with the least possible delay.

The undersigned avails himself of the occasion to renew to Sir Charles R. Vaughan the assurances of his great consideration.

JOHN FORSYTH.

Right Hon. Sir CHARLES R. VAUGHAN, &c.

Sir Charles R. Vaughan to Mr. Forsyth.

WASHINGTON, May 4, 1835.

The undersigned, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, has the honor to acknowledge the receipt of the note of the Secretary of State of the United States, in answer to the observations which he presented, according to the instructions of his Majesty's Government, respecting the proposal of the President of the United States to endeavor to settle the boundary by establishing a new commission of survey.

It is with great regret that the undersigned finds that a condition which his Majesty's Government stated to be an essential preliminary to the adoption of the proposal of the President, is declared to be inadmissible by the Government of the United States.

The Secretary of State, in his note, not only questions, but positively denies, that the view taken by his Majesty's Government of that point in the dispute which respects the rivers which are to be considered as falling directly into the Atlantic, has received any confirmation, as alleged in the note of the undersigned, from the terms of the award of the arbiter.

Without attempting to give a clear exposition of the meaning of that passage in the award where it is stated that it would be hazardous to comprehend the rivers Ristigouche and St. John in those which fall directly into the Atlantic ocean, the very passage cited by Mr. Forsyth in his note forms a part of the reasoning of the arbiter, founded on the words of the treaty, against admitting the American line north of the St.

John's, because that river and the Ristigouche, which that north line separates from rivers emptying themselves into the St. Lawrence, are not to be considered as the rivers of the treaty which fall into the Atlantic ocean.

The undersigned, therefore, appeals with confidence to the tenor of the language of the award to justify the inference which has been drawn from it by his Majesty's Government.

The acquiescence of the Government of the United States in that which was understood to be the opinion of the arbiter, was invited by his Majesty's Government, because the new commission could not enter upon their survey of the disputed territory in search of the highlands, to be distinguished by the separation of rivers, without a previous agreement between the respective Governments what rivers ought to be considered as rivers falling into the Atlantic.

Mr. Forsyth observes that the new submission should be left to the discretion of the commissioners, without restriction; but it appears to the undersigned that, if the character in which the rivers Ristigouche and St. John are to be regarded, is a question to be submitted to them; the proposal of the President would assume the character of a renewed arbitration, which, as Mr. Forsyth observes, "promises too little to attract the favorable consideration of either party."

While his Majesty's Government has been disposed to maintain the validity of the decisions of the arbiter on subordinate points, their mention has not been exclusively confined to those decided in favor of British claims. An attentive consideration of the whole of the decisions in the award will show that they are nearly balanced in favor of either party, while the general result of the arbitration, to which his Majesty's Government expressed a willingness to adhere, was so manifestly in favor of the United States; that to them were assigned three-fifths of the territory in dispute, and Rouse's point, in Lake Champlain, to which the American Government had voluntarily resigned all claim.

The undersigned begs leave to offer some explanation of the suggestion which he ventured to make without instructions from his Government, which is alluded to in the note of the Secretary of State. In a note addressed to Mr. McLane, and dated the 31st May, 1833, the undersigned, being convinced of the insuperable difficulties in the way of tracing the line of the treaty, notwithstanding the proposal of the President to deviate from the due north line from the St. Croix river, in search of the highlands, ventured to observe that the question of boundary could only be set at rest by the abandonment of the defective description of it in the treaty, and by the Governments mutually agreeing upon a conventional line more convenient to both parties than either of the lines insisted upon by the commissioners under the treaty of Ghent, or the line recommended by the King of the Netherlands. The answer to that suggestion, in a note dated the 5th June, 1833, from Mr. McLane, was, that it would rather add to than obviate the constitutional difficulties, already insuperable.

The undersigned acknowledges, with great satisfaction, the assurance which he has now received, that, if the President possessed the same full power as his Majesty's Government over the question of boundary, so long in discussion, he would have met the suggestion in as favorable

a spirit as that by which it was prompted. His Majesty's Government must acknowledge, and will duly appreciate, the friendly spirit and the unwearied endeavors of the President to remove the only difficulty which remains in the relations with the United States; and it is to be lamented that the two Governments cannot coincide in the opinion that the object is attainable by the last proposal of the President, as it is in his power to offer, in alleviation of the hopeless task of tracing the line of the treaty to which the Senate has advised, that any further negotiation with the British Government should be restricted.

The undersigned will transmit, without delay, to his Majesty's Government, a copy of the note which he has had the honor to receive from the Secretary of State of the United States, and he is ready to meet the wishes of the President, and to confer with the Secretary of State, whenever it may be convenient to receive him.

As to any proposition which it may be the wish of the Government of the United States to receive from his Majesty's Government, respecting a conventional substitute for the line of the treaty of 1783, the constant allusion in the correspondence which has taken place to constitutional difficulties in the way of the Executive treating for any other line than one conformable with that of the treaty, until the consent of the State of Maine is obtained, seems to point out the necessity, in the first instance, of attaining that object, which must be undertaken, exclusively, by the General Government of the United States. As to other difficulties which present themselves to the undersigned, they will, more properly, form the subject of a conference with the Secretary of State.

The undersigned has the honor to renew to Mr. Forsyth the assurance of his most distinguished consideration.

CHARLES R. VAUGHAN.

Hon. JOHN FORSYTH, &c.

Mr. Bankhead to Mr. Forsyth.

WASHINGTON, December 28, 1835.

The undersigned, his Britannic Majesty's chargé d'affaires, has the honor to acquaint Mr. Forsyth, the Secretary of State of the United States, that his Majesty's Government have taken into their most deliberate consideration, the note presented by Mr. Forsyth to Sir Charles Vaughan, on the 28th of April last, upon the boundary question; and the undersigned has been instructed to make the following communication to Mr. Forsyth in reply.

His Majesty's Government have observed with the greatest pleasure, during the whole of the communications which of late have taken place on this question, the friendly and conciliatory spirit which has been manifested by the President of the United States; and they are themselves equally animated by the sincerest desire to settle this matter by an arrangement just and honorable for both parties.

His Majesty's Government are fully convinced that, if the repeated attempts which they have made to come to an understanding on this subject with the Government of the United States have not been attended with success, the failure of their endeavors has been owing to no want

of a corresponding disposition on the part of the President, but has arisen from difficulties on his side over which he has had no control.

His Majesty's Government, however, do not the less lament that the advances which they have made have been fruitless; but with their regret is mingled the satisfactory consciousness which they feel, that, in making those advances, they have gone to the utmost extent to which a due regard to the honor and interests of the British Crown could permit them to go.

The time seems, however, now to be arrived, when it has become expedient to take a review of the position in which the discussion between the two Governments stands; and by separating those plans of arrangement which have failed, from those which are yet susceptible of being adopted, to disencumber their future communications of all useless matter, and to confine them to such suggestions only as may by possibility lead to a practical result.

And, first, with regard to the award of the King of the Netherlands. The two Governments had agreed to refer to that sovereign, as arbiter, the decision of three points of difference, and they pledged themselves beforehand to abide by the decision which he might pronounce. The King of the Netherlands decided absolutely two points out of the three; and with respect to the third, while he declared that an absolute decision of that point was impossible, he recommended to the two parties a compromise.

His Majesty's Government, on receiving the award of the King of the Netherlands, announced, without any hesitation, their willingness to abide by that award, if it should be equally accepted by the United States.

His Majesty's Government were, of course, fully aware that this award was not an absolute decision on all the three points submitted to reference; they were also quite sensible that, in some important matters, this award was less favorable to Great Britain than it was to the United States; but the wish of his Majesty's Government for a prompt and amicable settlement of this question, outweighed the objections to which the award was liable, and for the sake of obtaining such a settlement, they determined to accept the award.

But their expectations were not realized. The Senate of the United States refused, in July 1832, to subscribe to the award; and during the three years which have elapsed since that time, although the British Government has more than once declared that it was still ready to abide by its offer to accept the award, the Government of the United States has as often replied that, on its part, that award could not be agreed to. The British Government must now, in its turn, declare that it considers itself, by this refusal of the United States, fully and entirely released from the conditional offer which it had made; and the undersigned is instructed distinctly to announce to the President that the British Government withdraws its consent to accept the territorial compromise recommended by the King of the Netherlands.

The award being thus disposed of, the next matter to be considered is, the proposal of the President of the United States that a new survey of the disputed territory should be made by commissioners, to be named in one of two ways suggested by him; and that these commissioners

should endeavor, by exploring the country, to trace a boundary line that should be conformable with the treaty of 1783.

With this view, the President suggests that, whereas the landmark to be looked for consists of certain highlands described in the treaty, the commissioners should be authorized to search for those highlands in a northwesterly direction from the head of the St. Croix river, if no such highlands should be found in the due north line from that point.

To this, his Majesty's Government replied, that, before an exploring commission could be sent out in search of these highlands, it would be necessary that the two Governments, and by consequence their respective commissioners, should be agreed as to the definition by which any given hills were to be identified as being the highlands intended by the treaty.

That, according to the words of the treaty, these highlands were to be known by the circumstance of their dividing rivers flowing into the St. Lawrence from rivers flowing into the Atlantic; that, with regard to rivers flowing into the St. Lawrence, no doubt could possibly exist as to which those rivers were, but with regard to rivers flowing into the Atlantic ocean, a question has been mooted as to them, and this question is, whether the bay of Fundy should, for the purposes of the treaty, be considered as part of the Atlantic, and whether rivers flowing into that bay should be deemed to be Atlantic rivers.

His Majesty's Government stated the reasons which, in their opinion, render it clear and certain that the treaty of 1783 established a distinction between the bay of Fundy and the Atlantic ocean; and, therefore, excludes from the class of Atlantic rivers, rivers which discharge themselves into that bay.

His Majesty's Government further quoted, in confirmation of this opinion, the decision which, as they contend, the King of the Netherlands incidentally gave upon this question in the course of his award; and they expressed their hope that the Government of the United States would be prepared to agree with them, and with the King of the Netherlands, on this particular point.

It appears, however, by Mr. Forsyth's note of the 28th April, that this hope has been disappointed, and that the President finds himself unable to admit the distinction drawn on this point between the bay of Fundy and the Atlantic ocean.

Under these circumstances, his Majesty's Government cannot see how any useful result could arise out of the proposed survey; and it appears to them, on the contrary, that if such survey did not furnish fresh subjects of difference between the two Governments, it could at best only bring the subject back to the same point at which it now stands.

For the commissioners would probably not proceed far in their survey without coming to some high ground to which this difference of opinion on the river question would apply: the American commissioners would say that they had found the highlands of the treaty; the British commissioners would declare that those were not the highlands which the treaty describes. What, under such circumstances, would the commissioners have to do? Would they, then, come back to their respective Governments for that decision on the river question which ought to have been made before they set out? or, failing to come to an agreement among themselves

as to the character of the high ground thus met with, would they then at once and without further reference to their Governments, endeavor to find, in some other place, and some other direction, highlands which both Governments might agree to accept, as separating rivers which flow into the St. Lawrence from rivers which, by the consent of both parties, flow into the Atlantic ocean? If, indeed, the proposal of the President is to be understood as implying that this latter course of proceeding would be adopted, much of the difficulty attending the execution of that proposal would be removed.

The President, however, has suggested another way of getting over the embarrassment of the river question; and to this plan his Majesty's Government regret that it is not in their power to assent. The President suggests that the commission of survey should be empowered to decide this point of difference. But his Majesty's Government cannot admit that this point could properly be referred to such a commission. The river question is one which turns upon no local survey, and for the decision of which no further geographical or topographical information can be required. It turns upon the interpretation to be put upon the words of the treaty of 1783, and upon the application of that interpretation to geographical facts already well known and ascertained: a commission of survey therefore has no peculiar competency to decide such a question.

But, to refer that question to any authority, would be to submit it to a fresh arbitration; and if his Majesty's Government were prepared to agree to a fresh arbitration, which is by no means the case, such arbitration ought necessarily to include all the points in dispute between the two Governments, and not to be confined to one particular point alone.

With respect then to the President's proposal for a commission of exploration and survey, his Majesty's Government could only agree to such a commission provided there were a previous understanding between the two Governments, that although neither should be required to give up its own interpretation of the river question, yet as the commission of survey would be intended for purposes of conciliation, and with a view of putting an end to discussions on controverted points, the commissioners should be instructed to search for highlands upon the character of which no doubt could exist on either side.

But, if this modification of the President's proposal should not prove acceptable to the Government of the United States, the only remaining way of arriving at an adjustment of the difference, would be to abandon altogether the attempt to draw a line in conformity with the words of the treaty of 1783, and to fix upon a conventional line, to be drawn according to equitable principles, and with a view to the respective interests and convenience of the two parties.

His Majesty's Government are perfectly ready to treat for such a line, and they conceive that the natural features of the disputed territory would afford peculiar facilities for drawing it.

When a tract of country is claimed by each of two states, and each party is equally convinced of the justice of its own claims to the whole of the district in question, the fairest way of settling the controversy would seem to be to divide, in equal portions, between the two claimants, the territory in dispute.

Such a mode of arrangement appears to be consistent with the natural principles of equity.

His Majesty's Government would, therefore, propose to that of the United States to adjust the present difference, by dividing equally between Great Britain and the United States the territory in dispute; allotting to each party that portion which, from contiguity or other circumstances, would be most desirable as a possession for each.

The general outline of such a division would be, that the boundary between the two states should be drawn (as required by the treaty) due north from the head of the St. Croix river, and should be carried straight on till it intersected the St. John's; from thence it should run up the bed of the St. John's, to the southernmost source of that river, and from that point it should be drawn to the head of the Connecticut river, in such manner as to make the northern and southern allotments of the divided territory as nearly as possible equal to each other in extent; the northern allotment to remain with Great Britain, the southern allotment to belong to the United States.

The undersigned has the honor to renew to Mr. Forsyth the assurance of his most distinguished consideration.

CHARLES BANKHEAD.

HON. JOHN FORSYTH, &c.

Mr. Forsyth to Mr. Bankhead.

DEPARTMENT OF STATE,

Washington, February 29, 1836.

The undersigned, Secretary of State of the United States, has been instructed to reply to the note of Mr. Bankhead, his Britannic Majesty's chargé d'affaires, of the 28th December last, on the subject of the North-eastern boundary of the United States. The President sees with great satisfaction the continued assurances of the British Government of its earnest desire speedily and justly to settle the matter in controversy by an arrangement honorable to both parties, and believes that his own conciliatory disposition will be best manifested by a direct attention to the points now presented by his Britannic Majesty's Government, with a view to some definite understanding on the subject.

The award of the arbitrator having been now abandoned by both parties to the arbitration, the whole subject is open as if there never had been a submission of it. The President perceives in Mr. Bankhead's note no allusion to any portion of the line, except that beginning at the source of the St. Croix and terminating at the head of the Connecticut river. Supposing that this omission to bring into view the residue of the boundary line between the United States and the dominions of his Britannic Majesty has been the result of a conviction that the parties so far understood each other as to be satisfied that on that part of the subject a settlement could be made without difficulty or delay whenever it was important to them to make it, the President has instructed the undersigned to confine himself to the points touched by Mr. Bankhead's note, with this single suggestion, that events of a very grave character have lately occurred, which impress upon his mind a conviction that an establishment of that part of the line as to which the parties are nearly of

accord, had better be made at once, unless the efforts now making should promise an immediate adjustment of the whole controversy.

The President finds, with great regret, that his Britannic Majesty's Government adheres to its objection to the appointment of a commissioner, to be chosen in either of the modes proposed in former communications on the part of the United States. This regret is heightened by the conviction that the proposition upon which it is founded, "that the river question," as it is called, "is a question of treaty construction only," although repeated on various occasions by Great Britain, is demonstrably untenable. Indeed it is plausible only when material and most important words of description in the treaty are omitted in quoting from that instrument. The treaty marks the two determining points of the line in dispute, the source of the St. Croix, and the northwest angle of Nova Scotia. Is it a question of treaty construction only, where the northwest angle of Nova Scotia is? A survey of Nova Scotia, as known at the date of the treaty of peace, necessarily establishes that point. Where is it to be found, according to the public acts of Great Britain? Is it to be found on a line beginning on the westernmost bend of the Bay des Chaleurs, and thence along the highlands dividing the waters falling into the St. Lawrence from the waters falling into the sea? Can his Majesty's Government expect the Government of the United States to consent, before the selection of commissioners of examination and survey, and the appointment of an umpire to decide on the contingency of their disagreement, that the terminating point of the line running due north from the source of the St. Croix is to be alone looked for on highlands which cannot be reached from the westernmost bend of the Bay des Chaleurs but by running directly across high mountains, deep valleys, and the large rivers that flow through them? Agreement between the United States and Great Britain on this point is impossible, while his Majesty's Government continues to maintain this position. The President therefore, as at present informed, is under the necessity of looking to the new and conventional line offered in Mr. Bankhead's note. That equity, in disputes about territory, when both parties are satisfied of the justice of their respective pretensions, requires a fair division of the disputed property, is a truth the President freely admits; but the undersigned is instructed to remind Mr. Bankhead of what has been heretofore stated, that in a conventional line the wishes and interests of the State of Maine were to be consulted, and that the President cannot in justice to himself or to that State, make any proposition utterly irreconcilable with her previously well-known opinions on the subject. His Majesty's Government will not have forgotten that the principle of compromise and equitable division was adopted by the King of the Netherlands in the line recommended by him to the parties; a line rejected by the United States, because unjust to Maine: and yet the line proposed by the King of the Netherlands gave to Great Britain little more than two millions, while the proposition now made by his Britannic Majesty's Government secures to Great Britain of the disputed land more than four millions of acres. The division offered by Mr. Bankhead's note is not in harmony with the equitable rule from which it is said to spring, and if it were in conformity with it, could not be accepted without disrespect to the previous decisions and just expectations of Maine. The President is far

from supposing this proposition is founded upon a desire of his Majesty's Government to acquire territory, or that the quantity of land secured to Great Britain in the proposed compromise was the leading motive to the offer made. His Majesty's Government has no doubt made the offer without regard to the extent of the territory falling to the north or south of the St. John's, from a belief that a change in the character of the boundary line, substituting a river for a highland boundary, would be useful in preventing territorial disputes in future. Coinciding in this view of the subject, the President is nevertheless compelled to decline the boundary proposed, as inconsistent with the known wishes, rights, and decisions of the State.

With a view, however, to terminate at once all controversy; and satisfactorily, without regard to the extent of territory lost by one party or acquired by the other, to establish an unchangeable and definite and indisputable boundary, the President will, if his Majesty's Government consents to it, apply to the State of Maine for its assent to make the river St. John's, from its source to its mouth, the boundary between Maine and his Britannic Majesty's dominions in that part of North America.

The undersigned avails himself of this occasion to offer to Mr. Bankhead the assurances of his distinguished consideration.

JOHN FORSYTH.

Mr. Bankhead to Mr. Forsyth.

WASHINGTON, March 4, 1836.

The undersigned, his Britannic Majesty's chargé d'affaires, has the honor to acknowledge the receipt of the note which Mr. Forsyth, the Secretary of State of the United States, addressed to him on the 29th ultimo, upon the subject of the Northeast boundary between his Majesty's North American possessions and the United States.

The rejection, on the part of the President, of the conventional line which the undersigned had the honor to propose in his note of the 28th December, cannot but cause great regret to his Majesty's Government, inasmuch as it was proposed with a view to settle this protracted question of boundary, and as offering as fair and equal a division of the territory as they could possibly be required to subscribe to.

The undersigned, however, thinks it right to refer Mr. Forsyth to that part of his note of the 28th December wherein the proposition of the President for a commission of exploration and survey is fully discussed. It is there stated that his Majesty's Government could only agree to such a commission, provided there was a previous understanding between the two Governments that, although neither should be required to give up its own interpretation of "the river question," yet as the commission of survey would be intended for purposes of conciliation, with a view to putting an end to discussions on controverted points, the commissioners should be instructed to search for highlands upon the character of which no doubt could exist on either side.

It appears to the undersigned that the Secretary of State, in his answer of the 29th ultimo, has not given this modification, on the part of his Majesty's Government, of the President's proposition, the full weight to which it was entitled. Indeed, it was offered with the view of meeting, as far

as practicable, the wishes of the President, and of endeavoring, by such a preliminary measure, to bring about a settlement of the boundary upon a basis satisfactory to both parties.

With this view, the undersigned has the honor again to submit to the Secretary of State the modified proposal of his Majesty's Government, bearing in mind that the commissioners who may be appointed are not to *decide* upon points of difference, but are merely to present to the respective Governments the result of their labors, which, it is hoped and believed, will pave the way for an ultimate settlement of the question.

The undersigned considers it due to the conciliatory manner in which the President has acted throughout this discussion, to state frankly and clearly, that the proposition offered in Mr. Forsyth's note, to make the river St. John's, from its source to its mouth, the boundary between the United States and his Majesty's province of New Brunswick, is one to which the British Government, he is convinced, will never agree; and he abstained, in his note of the 28th of December, from any allusion to it, as the best proof he could give of its utter inadmissibility.

The undersigned has the honor to renew to Mr. Forsyth the assurance of his most distinguished consideration.

CHARLES BANKHEAD.

The Hon. JOHN FORSYTH, &c.

Mr. Forsyth to Mr. Bankhead.

DEPARTMENT OF STATE,

Washington, March 5, 1836.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Bankhead, chargé d'affaires of his Britannic Majesty, dated the 4th instant, in answer to that addressed to him by the undersigned on the 29th ultimo, upon the subject of the Northeastern boundary between the United States and his Majesty's possessions in North America. Mr. Bankhead's communication having been submitted to the consideration of the President, the undersigned is instructed to express the regret which is felt that his proposition to make the river St. John's the boundary between the State of Maine and his Majesty's province of New Brunswick, the acceptance of which, it is believed, would have removed a fruitful source of vexatious difficulties, will, in the opinion of Mr. Bankhead, be declined by his Majesty's Government. The Government of the United States cannot however relinquish the hope that this proposal, when brought before his Majesty's cabinet, and considered with the attention and deliberation due to its merits, as well as to the important nature of the question with which it is connected, will be viewed in a more favorable light than that in which it appears to have presented itself to Mr. Bankhead. If, however, this expectation should be disappointed, and the river boundary be rejected, it will be necessary, before the President consents to the modification of his previous proposition for the appointment of a commission of exploration and survey, to be informed more fully of the views of the British Gov-

ernment in offering the modification, so that he may be enabled to judge how the report of the commission, (which, as now proposed to be constituted, is not to decide upon points of difference,) when it shall have been rendered, is likely to lead to an ultimate settlement of the question of boundary between the two Governments. The President also desires to be informed which of the modes proposed for the selection of commissioners is the one intended to be accepted with the modification suggested by his Britannic Majesty's Government. Whenever Mr. Bankhead is fully instructed on these points, the undersigned is prepared, by the directions of the President, to make a definite reply, which will be dictated by a sincere desire on the part of the President to adopt any proposition that promises a speedy and satisfactory termination of this long-pending and perplexing controversy.

The undersigned renews to Mr. Bankhead the assurance of his distinguished consideration.

JOHN FORSYTH.

CHARLES BANKHEAD, Esq., &c.